

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)
EXECUTIVE GOVERNING COMMITTEE**

REGULAR MEETING

Date: Thursday, September 18, 2003

Time: 5:30 p.m. to 7:00 p.m.

Location: City of Pittsburg Council Chambers
65 Civic Drive, Pittsburg

Agenda

- 1) Introduce new and returning Executive Governing Committee (“EGC”) members, staff, and any members of the public.
- 2) Public Comment.
- 3) Approve Meeting Report for July 17, 2003.
- 4) Updates and status reports:
 - a) General (John Kopchik, HCPA staff, and David Zippin, Jones and Stokes Associates)
 - Work of consultants and products
 - Budget performance
 - Fund-raising efforts
 - Wetlands
 - Schedule
 - b) Public Outreach and Involvement Program, including:
 - EIR/EIS Scoping Meetings on July 17 and comments
 - Web-site
 - HCPA Coordination Group
 - HCPA Coordination Group Subcommittees
 - Science Advisory Panel
 - Planned outreach to East County special districts
 - Plans for other public meetings and workshops
 - c) State and federal resource agency perspectives
- 5) Review Draft East Contra Costa County NCCP/HCP Planning Agreement among the HCPA, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service. Consider Authorizing the HCPA Chair to sign the Planning Agreement.

- 6) Consider authorizing the Chair or his designee to execute a contract amendment with the California Department of Fish and Game for the receipt of approximately \$80,000 in additional Section 6 grant funds.
- 7) HCPA Budget Discussion
 - Review Budget provisionally approved by EGC in January 2003;
 - Consider fund-raising progress and future fund-raising opportunities;
 - Review revised contingency strategy outlining alternatives should necessary funding not be received;
 - Approve budget and expenditure limits and set an overall additional fund-raising goal of \$365,000, and direct staff to continue to pursue grants and outside funding sources;
- 8) Presentation and discussion on preliminary economic analysis on estimated costs of, and possible sources of funding for, implementing the HCP/NCCP.
- 9) Administrative matters:
 - Ratify invoices submitted by Jones and Stokes, Contra Costa County, and Erica Fleishman and paid by the HCPA Treasurer.
- 10) Review future Executive Governing Committee discussion items.
- 11) Select Next Meeting Dates
 - Alternative recommended dates for next meeting:
 - Thursday, December 11, 2003 (2nd Thursday)
 - Thursday, December 18, 2003 (3rd Thursday)
 - Thursday, January 8, 2004 (2nd Thursday)
 - Thursday, January 15, 2004 (3rd Thursday)
 - Thursday, January 22, 2004 (4th Thursday)
 - Alternative recommended dates for subsequent meeting:
 - Thursday, March 11, 2003 (2nd Thursday)
 - Thursday, March 18, 2003 (3rd Thursday)
 - Thursday, March 25, 2004 (4th Thursday)
- 11) Adjourn by 7:00 p.m.

*If you have questions about this agenda or desire additional meeting materials, you may contact
John Kopchik of the Contra Costa County Community Development Department
at 925-335-1227.*

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**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION
Executive Governing Committee
Draft Meeting Record
July 17, 2003**

The East County Habitat Conservation Plan Association (HCPA) Executive Governing Committee (EGC) met on Thursday, July 17, 2003, 5:30 p.m. in the City of Pittsburg City Council Chambers. In attendance were EGC Representatives from Contra Costa County (Supervisor Federal Glover, alternate) City of Clayton (Council member Greg Manning), City of Oakley (Mayor Jeff Huffaker, EGC Chair), Contra Costa Water District (Vice President Elizabeth Anello), (Director Bette Boatmun, alternate) and East Bay Regional Park District (Director Ted Radke).

The following is a review of the actions taken in accordance with the meeting agenda:

1. Introductions

Supervisor Glover announced that Millie Greenberg has been appointed to replace Donna Gerber on the County Board of Supervisors and would likely be designated the County representative on the EGC. Supervisor Glover said he expected to continue as the County alternate.

2. Public Comment

There were no public comments made.

3. Approve Meeting Report of March 20, 2003

The meeting report was unanimously approved as presented (3-0) with one abstention, Supervisor Glover.

4. Updates and Status Reports

a) General (John Kopchik, HCPA Staff and David Zippin, Jones and Stokes Associates)

- **Work of Consultants and Products --** Mr. Zippin stated that Phase 2 of the project is underway. The two major deliverables in Phase 2 are the preliminary drafts of the HCP/NCCP and the EIR/EIS. The initial scoping meetings for the EIR/EIS are being held on July 17, before and after the EGC meeting. The consultant's activity in the past three months has been focused on responding to issues raised by the Coordination Group and the Science Panel. The expenditures in the next three months are expected to ramp up because of the work needed to complete the administrative drafts. The current funding is sufficient to complete Phase 2. Additional funds will be needed to complete Phase 3 of the project that includes finalizing the documents and receiving the permits.

- **Budget Performance** -- Mr. Kopchik explained that the project is within budget. There will be a more detailed discussion of budget issues at the next EGC meeting. A member of the EGC questioned why the USFWS/CDFG Section 6 grants have not been received. Mr. Kopchik explained that a grant contract with CDFG had recently been executed by the HCPA and that CDFG's execution was pending. CDFG normally requires an NCCP Agreement to be in place before grant funding is provided, but CDFG has graciously agreed to make an exception for the HCPA.
- **Schedule update** -- Mr. Kopchik reported that, due to the decision last year to slow down to avoid outpacing public and agency involvement, the project is about six months behind the original schedule. The new scheduled completion date for Phase 2 is March 2004.
- **Fund Raising Efforts, including the Six-County Request to Congress** -- Mr. Kopchik reported that \$35,000 has been received from the County Fish and Wildlife Propagation Fund and \$40,000 has been committed as additional Section 6 grant funds. Mr. Kopchik said he does not think the Six-County request to Congress will be funded this year. Alternative sources of funds are being explored. The EGC noted that fund raising is a key concern going forward and since it takes six to twelve months to receive grant funds in most cases, it was suggested that HCPA staff be very focused on this issue in the near term. Mr. Kopchik reported that fund raising is a high priority and he is following up on opportunities at the State and Federal level, particularly within the CALFED program.
- **Regulatory News** -- Mr. Zippin mentioned that the USFWS is considering listing actions for the California Tiger Salamander and the Midvalley Fairy Shrimp. This will not impact the HCP/NCCP because both species have been included in the covered species list in anticipation of the action. USFWS is also considering revised critical habitat designations for the California Gnatcatcher. This proposed action provides an example of how it may be possible for completed HCPs to insulate a region against critical habitat designations.
- **Wetlands** -- Mr. Kopchik said that discussions have taken place with Army Corps of Engineers and USFWS regarding the difficulties being experienced by many of the participants in the six northern California counties preparing HCPs and participating in the Funding Partners group regarding integrating wetlands coverage into the HCP process. A working group consisting of Corps, USFWS, and agency staff is being formed to explore these issues further.

b) Updates on Public Outreach and Involvement Program

- **EIR/EIS Scoping Meetings on July 17** -- A Notice of Intent/Notice of Preparation regarding the EIR/EIS for the HCP/NCCP has been published in the Federal Register and distributed to the HCPA mailing list. Scoping meetings are being held July 17.
 - **Web-site** -- (<http://www.cocohcp.org/index.html>).
 - **HCPA Coordination Group** -- There have been three meetings since the last EGC meeting. The focus for discussion has been on permit area and framework development. The Coordination Group has been encouraged to submit comment letters on the work products to date. Four comment letters have been received and copies of these letters will be made available to the EGC at the meeting. The comments have been extensive and detailed.
 - **HCPA Coordination Group Agriculture Subcommittee** -- Two meetings have been held with the subcommittee and recommendations have been prepared for consideration by the full coordination group including, de-emphasizing conservation on irrigated crop and orchard land, recognizing the need to maintain grazing as a resource management tool, and protection of neighboring landowner rights.
 - **Science Advisory Panel** -- The last Science Panel meeting was in February 2003 and the next meeting is being planned for the fall of 2003.
 - **Plans for other Public Meetings and Workshops** -- Agency staff presented to the Citizens Land Alliance Annual Symposium on June 7 regarding the HCP/NCCP.
- c) **State and Federal Resource Agency Perspectives** -- There was no discussion on this item.
5. **Consider Letter received from the City of Antioch Requesting Removal from the HCPA Study Area** -- Mr. Kopchik reported that agency staff has evaluated alternatives for responding to the City of Antioch's request to be removed from the HCP study area. The EGC Chair, Councilman Huffacker has attempted to meet with Antioch's Mayor but these efforts were unsuccessful. Mr. Kopchik recommended that Antioch's request for removal from the permit area be agreed to but Antioch should be retained in the inventory area and the area within which conservation actions are planned. This will allow willing sellers to participate in conservation if they desire. The EGC unanimously approved the staff recommendation on a 4-0 vote.
6. **Consider Raising the Interim Payment Limit for the Jones and Stokes Contract** -- Mr. Kopchik indicated that the requested action is to authorize an increase in the payment limit on the consultant Phase 2 work by \$227,044, increasing the cost ceiling for Phase 2 work from \$422,908 to \$649,952. This will establish a Phase 2 cost ceiling sufficient to cover expected costs to complete the work. There will be adequate funds to cover this work once the Section 6 grant is received. The work will be staged so that as funds become available for the extra work, authorization to expend the funds will be incrementally increased up to

the ceiling approved by the EGC (\$649,952). A more detailed budget discussion will occur at the September 2003 EGC meeting. The EGC unanimously approved the staff recommendation on a 4-0 vote.

7. Administrative Matters

- **Ratify Invoices Submitted by Jones and Stokes, Contra Costa County, and Erica Fleishman** -- Invoices were unanimously approved as presented (4-0).

WORKSHOP

This agenda item included a discussion of the key future policy decisions that the EGC will need to make. Agency staff is working with the Coordination Group and Science Panel to gain consensus on these topics.

- HCPA Framework Document
- Permit Area and covered activities
- Funding and conservation calculus
- Implementing the plan
- Stakeholder Perspectives as the Plan Evolves

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- ## **8. Review Future Executive Governing Committee Discussion Items** -- Mr. Kopchik reported that budget and fund raising will be the key agenda items for the September 2003 meeting.

9. Select Next Meeting Dates

The next meeting date was tentatively set for September 18, 2003. There was no date set for the winter meeting.

10. Adjournment at approximately 6:50 p.m.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)
EXECUTIVE GOVERNING COMMITTEE**

DATE: September 18, 2003
TO: Executive Governing Committee (EGC)
FROM: Member Agency Staff
SUBJECT: Updates and status reports

RECOMMENDATION

- 1) ACCEPT status report on the project, including work of the consultants, the public involvement program, comments from the resources agency, and HCPA finances and schedule.
- 2) AUTHORIZE the HCPA staff to co-host a conservation planning conference in December 2004 together with our partners in the six county Northern California Conservation Planning Funding Partners.

FISCAL IMPACTS

None.

DISCUSSION

a) General update: Phase 2 of the project involves building on (and refining) work to date, including the preliminary Draft Conservation Strategy and Impact Analysis, to develop a preliminary draft HCP/NCCP and EIR/EIS. The goal is to have a preliminary draft of the HCP/NCCP ready for presentation to the Coordination Group by their November 2003 meeting (the revised Draft HCP/NCCP would be completed in the Spring of 2004).

Recent work has included the digitization of the updated biological inventory, refinement of the habitat models for covered species based on the new inventory data and the inclusion of Clayton, refinements to the impact scenarios to exclude Antioch and to reflect a permit area that is tied to local land-use policies, continued economic analysis, and comprehensive work on chapters of the HCP/NCCP that were not initiated in earlier stages (i.e. Implementation, Assurances, etc.)

- **Work of consultants and products:** see attached quarterly report from Jones and Stokes
- **Finances:** HCPA transactions are summarized in the attached Activity Summary showing all deposits and debits since the County became Treasurer.
- **Budget and Fund-raising efforts, including 6-county request to Congress for funds:** Budget and fund raising efforts are thoroughly discussed in the staff report and attachments for agenda item #7. Regarding the six-county request to Congress, prospects seem bleak despite the strong support from Congressman Miller, Congresswoman Tauscher, and others. Our request does not appear in either the House or Senate Interior Appropriations bills. Our last hope for this year is the conference committee, on

which Senator Feinstein sits, though this is a long shot given that our request would have to be inserted in some fashion. A delegation of lobbyists from the six-county group (including Contra Costa County's Washington representation) is meeting with Senator Feinstein's staff in September. A decision on whether to try again next year will be considered at the next EGC meeting. A request for implementation funds might be more appropriate for FY05.

- **Hosting a conservation planning conference:** As part of our cooperative work regarding HCP funding and wetlands integration, the six-county Northern California Conservation Planning Funding Partners are planning a one day conference on conservation planning for December 4, 2003 in Vacaville. The purpose of the event is to share experiences with this topic across this part of the state and to learn from the successes and failures of neighboring counties. The HCPA would be a co-host of the event but would not contribute any funds. Professional consulting firms have been asked to contribute, and our consultants, Jones and Stokes, have already made a gracious contribution. The EGC is being asked to sanction our participation in the event. When available, announcement information will be provided to the EGC and to the HCPA mailing list.
- **Wetlands:** As mentioned at the last EGC meeting, integrating wetlands permitting into the HCP/NCCP has been a key recent focus, and we have been taking small but hopefully productive steps forward in this regard. In pursuing our combined request to Congress for funds, the six conservation planning efforts involved discovered a shared goal of/concern over integration of wetlands permits with endangered species permits. We raised this issue in a meeting with Steve Thompson, the U.S. Fish and Wildlife Service's (USFWS) top administrator for this part of the country, and he invited us to present on this topic at a joint meeting of top administrators from USFWS (including Mr. Thomson), the U.S. Army Corps of Engineers (including General Davis from the Southwest Division and Colonels McCormick and Conrad from the San Francisco and Sacramento Districts), and the California Department of Fish and Game (including Mr. Hight, Director of the Department of Fish and Game). Roberta Goulart, Principal Planner with the Contra Costa County Water Agency, is coordinating the working group effort on behalf of the six counties at no charge to the HCPA. Staff representing the HCPA and the other efforts in other counties explained our perceptions of the advantages of integrating wetlands in HCPs, discussed the obstacles encountered thus far in doing so, and requested that: 1) the Army Corps attempt to provide staff to attend meetings of individual conservation planning efforts; 2) that a working group be established to identify feasible approaches for integrating wetlands and endangered species.

The first wetlands integration working group was held in late August in San Francisco and was well attended, including representatives from the Corps, USFWS, EPA, the HCPA, and the other participating counties. A Corps expert on wetlands planning from the Los Angeles area was flown in. A positive development is that we have managed to get the wetlands permitting agency's attention regarding our desire for integration. However, schedule, questions on who drives the process, and funding are all serious concerns that need to be explored further. Three more meetings are planned, including the next one, which will be September 25. In the meantime, staff will seek a direct meeting with relevant Corps staff on our particular project. A comprehensive update on the wetlands topic, including recommendations on the best approach for integrating wetlands permitting, will be provided at the next EGC meeting.

- **Schedule update:** We continue to plan to present a preliminary partial draft of the HCP/NCCP to the Coordination Group at their November meeting. The revised, more formal draft HCP/NCCP is expected in the spring of 2004.

b) Update on the Public Outreach and Involvement Program:

- **EIR/EIS Scoping Meetings on July 17:** The HCPA and the U.S. Fish and Wildlife Service hosted two scoping meetings to announce preparation of an EIR/EIS for the HCP/NCCP project and to solicit comments on July 17, 2003 at 3:30 p.m. and again at 7:00 p.m. at the Pittsburg City Council Chambers. Comments were received at both meetings and in writing by the August 4 comment deadline. Copies of the four comment letters received will be available at the EGC meeting or by contacting staff.
- **Web site:** <http://www.cocohcp.org>, has been updated to reflect meeting records, future scheduled meetings and agendas for all HCPA committees. The documents section of the website has also been updated to include all major draft documents released to date. Maps that are referenced throughout these documents are not available online and will be mailed upon request.
- **HCPA Coordination Group:** The CG has met twice since the last EGC meeting. The agendas, and meeting records are available on the HCPA website. These recent meetings have focused on topics such as implementation of the HCP/NCCP, economic analysis of how implementation can be funded, and regulatory agency perspectives.
- **Science Advisory Panel:** This body last met on February 26 and is expected to meet again later this fall. Past meeting packets and meeting reports are provided on the project website.
- **Planned outreach to other special districts in East County:** Staff is planning an outreach program to sanitary districts, irrigation and water districts, school districts, and other appropriate special districts over the next several months regarding the HCPA's efforts. Unlike private project proponents, such agencies generally do not need land use permits from HCPA Member Agencies for their projects. Therefore, it is unlikely we could devise a means for such agencies to receive a permit for activities covered by the HCP through the County or one of the cities, though this is how the system will work for private developers. Such special districts may need to take some form of independent action on the HCP or Implementation Agreement to be covered, and staff would like to make these agencies aware of our efforts now so that they are prepared to consider their involvement in receiving an HCP permit when the time comes.
- **Plans for other public meetings and workshops:** Staff is always open to making presentations to public groups and has discussed with the Home Builders Association the possibility of organizing a special luncheon update for HBA members. The California Native Plant Society has requested that staff present at an upcoming CNPS Board meeting

c) State and Federal Resource Agencies' perspectives: Agency representatives may be present and may wish to comment on the direction of the planning effort.



Memorandum

Date: September 12, 2003

To: East Contra Costa County HCP Association Executive Governing Committee
c/o John Kopchik

cc:

From: David Zippin, Project Manager

Subject: **ECCCo. HCP/NCCP Status Report: May 26 to August 24, 2003**

This is the seventh quarterly status report on our progress in completing a Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) for the East Contra Costa County Habitat Conservation Plan Association (HCPA). This status report provides a brief narrative summary of our accomplishments, a summary of the project's financial status, a list of accomplishments by task, a description of schedule changes, and a summary of next steps within Phase 2.

Summary of Accomplishments

The majority of our work during this reporting period has been to prepare the preliminary draft of the HCP/NCCP. We have prepared for, attended, and presented at 7 Staff meetings, 3 Coordination Groups meetings, 4 additional meetings with stakeholders and agency staff, and the last EGC meeting on July 17. We also prepared for and presented at two public scoping meetings for the EIR/EIS that were held on July 17.

Financial Status

Table 1 summarizes our Phase 2 budget status as of August 24, 2003. The current Phase 2 authorized budget is \$165,944. The EGC has authorized staff to authorize an additional \$149,652 as funds are available, approximately the same amount we estimate will be required to complete Phase 2 (through the preliminary draft HCP/NCCP and EIR/EIS). The total contract amount remains \$705,400, though we estimate already-approved scope augmentations bring our current estimated project budget to \$826,987.

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Table 1. Jones & Stokes Budget Status as of August 24, 2003.

Task	Phase 1 Spent	Phase 2 Budget*	Spent Phase 2	Remain Phase 2	% Remain	Est. Work Remain**
1: Project management	\$ 63,441	\$ 30,000	\$ 28,177	\$ 1,883	6%	\$ 12,000
2: Public involvement	\$ 5,479	\$ 2,500	\$ 1,697	\$ 803	32%	\$ 4,000
3: Baseline data inventory	\$124,468	\$ 15,383	\$ 15,383	\$ 0	0%	0
4: Conservation strategies	\$105,101	\$ 7,577	\$ 7,557	\$ 0	0%	0
5: Economic analysis	\$ 22,215	\$ 15,000	\$ 10,128	\$ 4,872	32%	\$ 20,000
6: Develop HCP/NCCP		\$ 79,004	\$ 20,001	\$ 59,003	75%	\$ 70,000
7: NEPA/CEQA documents	\$ 5,977	\$ 10,000	\$ 7,454	\$ 2,546	25%	\$ 72,000
8: Implementation agreement						
9: CWA Compliance	\$ 5,630	\$ 5,000	\$ 1,059	\$ 3,942	79%	\$ 29,000
10: CFGC 1600 Compliance	\$ 1,746	\$ 1,500	\$ 203	\$ 1,298	87%	\$ 18,000
Total	\$334,056	\$ 165,944	\$ 91,598	\$ 74,346	45%	\$ 225,000

* Phase 2 budget authorized for expenditure. Staff has issued a not to exceed notice of \$500,000. EGC has authorized staff to raise this to \$649,952 as funds are available

**I.e., total estimated remaining cost to complete Phase 2

Accomplishments by Task

This section lists our accomplishments by task for this status report period.

Task 1: Project Management and Meetings

- Prepared for and attended 5 staff committee meetings
- Prepared for and attended 3 meetings of the HCPA Coordination Group
- Prepared for and attended 1 EGC meeting
- Prepared 3 invoices and summary documents
- Prepared for and attended 3 meetings with stakeholders (environmental groups, developer interests, and regulatory agencies) to review their comments on the conservation strategy
- Prepared quarterly status report on project

Task 2: Public Involvement

- Posted new material on web site as requested by Agency staff
- Hosted web site for 3 months

Task 4: Conservation Strategy

- Finalized and submitted memo to NOAA-Fisheries regarding potential impacts of HCP/NCCP covered activities on special-status fish
- Met with NOAA-Fisheries on July 9 to discuss approach to fisheries impacts

Task 5: Economic Analysis

- Prepared for and led meeting with Staff and representatives of CCWD in Concord on June 24 and with EBRPD on July 15 in Oakland to discuss preliminary spreadsheets and categories for HCP/NCCP costs including land acquisition, program administration, preserve management, and habitat restoration

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- Revised spreadsheets based on comments from Staff, EBRPD, and EPS
- Provided data on preliminary land acquisition cost models (EPS)
- Prepared revised memos on preliminary land acquisition costs (EPS)
- EPS staff attended HCPA Coordination Group meeting on July 17

Task 6: HCP/NCCP

- Began writing introduction (chapter 1) of HCP/NCCP
- Coordinated with County staff on covered projects outside ULL to be included in covered activities chapter of HCP/NCCP
- Revised Physical and Biological resources chapter of HCP/NCCP based on comments
- Developed outline of impacts chapter for HCP
- Revised conservation strategy based on comments from stakeholders, SAP, agency staff, HCPA staff
- Coordinated closely with County staff to finalize land cover map, land use designation map, and analyses required to revise impacts and conservation strategy
- Began writing monitoring and adaptive management chapter of HCP/NCCP
- Began writing implementation chapter of HCP/NCCP
- Began writing assurances chapter of HCP/NCCP
- Developed approach and outline to alternatives chapter of HCP/NCCP
- Continued developing glossary and other appendices of HCP/NCCP
- Created and maintained HCP/NCCP chapter, figure, and table status tracking sheets

Task 7: EIR/EIS

- Attended 2 scoping meetings for EIR/EIS (EIR/EIS project manager) in July 17
- Continued to develop options for EIR/EIS alternatives for staff consideration
- Continued to gather background material for EIR/EIS preparation
- Continued to coordinate EIR/EIS tasks and schedule with FWS and Staff

Tasks 9 and 10: Wetlands Permitting

- Continued to track wetland compliance and integration for HCP/NCCP
- New primary contact on wetlands permitting (Ken Schwarz) reviewed project documents and coordinated status of issues with project manager and Staff.

Schedule

The Preliminary Partial Draft HCP/NCCP is on schedule to be completed at the end of October. Preparation of the administrative draft EIR/EIS will begin in earnest after the preliminary draft HCP/NCCP is submitted. The administrative draft EIR/EIS will be completed in early 2004.

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Next Steps

Remaining work in Phase 2 includes:

- Complete the preliminary draft HCP/NCCP by October 31
- Add additional covered species if additional funding is secured (only after the preliminary draft HCP/NCCP is submitted)
- Finalize and sign NCCP Planning Agreement
- Estimate full cost of conservation strategy, including land acquisition and operations, management, and maintenance (OM&M) costs
- Prepare Administrative Draft EIR/EIS

HABITAT CONSERVATION PLAN ASSOCIATION

ACTIVITY SUMMARY

As of August 14, 2003

this page has been superceded

TRUST 499300

11/25/2002	Opening Deposit - Transfer balance from CCWD	\$153,703.76	
12/12/2002	Transfer from PW Lowell Tunison, JV2195 12/5/02	\$100,000.00	
12/12/2002	Interest earnings from PW Lowell Tunison, JV2195 12/5/02	\$14,056.38	
3/18/2003	Transfer from LAIF Account DP402206 3/18/03	\$30,000.00	
4/14/2003	Transfer from Fish & Wildlife Propagation fund J/V4137 4/14/03	\$35,000.00	
7/10/2003	Transfer from LAIF Account DP408375 7/10/03	\$30,000.00	
	Total Deposits:		\$362,760.14

12/10/2002	Jones & Stokes Oct 10, 02 invoice	\$8,600.97	
12/10/2002	Jones & Stokes Nov 08, 02 invoice	\$8,000.54	
12/10/2002	Erica Fleishman Dec1, 02 invoice	\$988.33	
1/7/2003	Jones & Stokes Dec 13, 02 invoice	\$18,340.14	
2/4/2003	Jones & Stokes Jan 15, 03 invoice	\$11,925.13	
2/5/2003	Transfer \$200,000 to LAIF account	\$200,000.00	
2/19/2003	SAP meeting payment B. Ertter	\$800.00	
2/19/2003	SAP meeting payment S. Orloff	\$800.00	
2/19/2003	SAP meeting payment B. Pavlik	\$800.00	
2/19/2003	SAP meeting payment L. Huntsinger	\$1,300.00	
3/17/2003	Erica Fleishman March1, 03 invoice	\$2,186.81	
4/10/2003	SAP meeting pmt, S. Terrill	\$400.00	
4/10/2003	SAP 2/26/03 meeting pmt, L. Huntsinger	\$1,300.00	
4/10/2003	SAP 2/26/03 meeting pmt, B. Pavlik	\$800.00	
4/10/2003	SAP 2/26/03 meeting pmt, IBIS S. Orloff	\$800.00	
4/10/2003	SAP 2/26/03 meeting pmt, B. Ertter	\$800.00	
4/10/2003	SAP 5/29/02 & 2/26/03 meeting pmts, A. Launer	\$1,600.00	
4/10/2003	Erica Fleishman April 1, 2003 invoice	\$937.50	
4/16/2003	Jones & Stokes 2/7/30 invoice	\$11,848.56	
4/16/2003	Jones & Stokes 2/10/03 Retainage invoice	\$18,194.70	
4/16/2003	Jones & Stokes 2/25/03 invoice	\$2,660.31	
5/15/2003	Jones & Stokes 3/13/03 & 4/10/03 invoices	\$9,536.90	
6/14/2003	Jones & Stokes 5/7/03 invoice	\$10,659.33	
6/18/2003	HCPA Institute for Ecology 6/5/03 invoice	\$1,500.00	
6/25/2003	Jones & Stokes 6/4/03 invoice	\$13,999.77	
	Total Expenditures:		\$328,778.99

Balance 499300: **\$33,981.15**

LAIF ACCOUNT

2/5/2003	Transferred from Trust 499300	\$200,000.00	
4/15/2003	Interest	\$551.34	
7/15/2003	Interest	\$751.10	
	Total Deposits:		<u>\$201,302.44</u>

3/18/2003	Transferred \$30000 to Trust 499300	\$30,000.00	
7/10/2003	Transferred \$30000 to Trust 499300	\$30,000.00	
	Total Expenditures:		\$60,000.00

Balance LAIF: **\$141,302.44**

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)
EXECUTIVE GOVERNING COMMITTEE**

DATE: September 18, 2003
TO: Executive Governing Committee (EGC)
FROM: Member Agency Staff
SUBJECT: Planning Agreement Among the HCPA, the California Department of Fish and Game (DFG), and the U.S. Fish and Wildlife Service (FWS)

RECOMMENDATION

- 1) REVIEW Draft East Contra Costa County NCCP/HCP Planning Agreement among the HCPA, the California Department of Fish and Game (DFG), and the U.S. Fish and Wildlife Service (FWS).
- 2) CONSIDER Authorizing the HCPA Chair to sign the Planning Agreement.

DISCUSSION

The 2002 amendments to the California Natural Community Conservation Planning Act (NCCPA) require DFG to enter into such Planning Agreements with local entities preparing Natural Community Conservation Plans (NCCPs). The purpose of the planning agreement is to define the process that will be used to prepare the plan and to establish an understanding for how permitting will occur during the interim period before the plan is approved. Since the law changed after our plan was underway and our planning process is now fairly advanced, large portions of the agreement simply outline the planning process as it exists already. Neither state nor federal law requires FWS to sign such Planning Agreements, but parties agreed that including FWS would be appropriate. Please note, continuation of our state/federal "Section 6" grant funding is contingent on the HCPA entering into such a Planning Agreement with DFG.

A new component introduced by the Planning Agreement is the Interim Review process described in paragraph 5.1.6 and, more thoroughly, in Exhibit C. These sections describe how development and other projects requiring a permit will be addressed as the plan is prepared. Under the text negotiated by staff, project-by-project review and permitting by FWS and DFG would continue as it is now. However, under the agreement, in addition to the notices they typically receive already from HCPA Member Agencies, FWS and DFG would receive a map of the project location on an aerial photo base for context. The agreement also provides that parties shall meet as needed to confer on interim projects.

Attached please find a draft of the Planning Agreement for the East Contra Costa NCCP/HCP that staff recommends for execution. This draft agreement is identical to the version circulated for public review (including copies to EGC members) and placed on the HCPA website on

August 12, 2003. HCPA staff, FWS, and DFG conducted a 21 public review period for the draft Agreement, as required by a comment period that closed on September 2, 2003. Staff understands that DFG received no public comments on the draft Agreement during the comment period.

HCPA staff and DFG have reached agreement on Planning Agreement and recommend no changes to the public review draft. The agreement was negotiated with FWS staff as well, but we have not yet received official concurrence from FWS following what we understand was to be a review by the U.S. Solicitor's Office. We hope to have more information by September 18. However, HCPA staff and CDFG agree that is important for the HCPA and DFG to act on the Agreement now before drafts of the HCP/NCCP are released. Hopefully, FWS can sign the agreement as it stands. If not, the HCPA and DFG may subsequently consider whether and how to amend the Agreement to accommodate FWS.

Planning Agreement

by and among

**the East Contra Costa County
Habitat Conservation Plan Association and
the California Department of Fish and Game,
and the United States Fish and Wildlife Service,
regarding the**

**East Contra Costa County
Natural Community Conservation Plan and
Habitat Conservation Plan**

September 18, 2003

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East Contra Costa County Natural Community Conservation Plan and Habitat Conservation Plan Planning Agreement

This agreement regarding the East Contra Costa County Natural Community Conservation Plan and Habitat Conservation Plan (“Agreement”) is entered into as of the Effective Date between the East Contra Costa County Habitat Conservation Plan Association (“HCPA”), the California Department of Fish and Game (“DFG”), and the United States Fish and Wildlife Service (“USFWS”). These entities may be referred to collectively as “Parties” and each individually as a “Party.” The DFG and USFWS may be referred to collectively as “Wildlife Agencies.”

1. Definitions

Terms used in this Agreement that are defined in Fish and Game Code Section 2805 will have the meanings set forth therein. The following terms as used in this Agreement will have the meanings set forth below.

- 1.1. CEQA means the California Environmental Quality Act, Public Resources Code, Section 21000, *et seq.*
- 1.2. CESA means the California Endangered Species Act, California Fish and Game Code, Section 2080, *et seq.*
- 1.3. Coordination Group means the committee of stakeholders and agency staff that provides input on the development of the NCCP/HCP.
- 1.4. County means the government of the County of Contra Costa.
- 1.5. Covered Activities means the land development, land use and other activities that will be addressed in the NCCP/HCP and for which the HCPA's Member Agencies will seek an NCCPA take permit pursuant to Fish and Game Code, Section 2835 and an incidental take permit pursuant to Section 10 (a)(1)(B) of FESA.
- 1.6. DFG means the California Department of Fish and Game.
- 1.7. EGC means the Executive Governing Committee of the East Contra Costa County Habitat Conservation Plan Association
- 1.8. FESA means the federal Endangered Species Act, title 16, U.S.C.A., Section 1530, *et seq.*
- 1.9. Habitat Conservation Plan or HCP means a plan prepared pursuant to Section 10 of FESA.

- 1.10. HCPA means the East Contra Costa County Habitat Conservation Plan Association, a Joint Powers Authority formed pursuant to the Joint Exercise of Powers Law, Government Code sections 6500 through 6599.1.
- 1.11. Implementation Agreement means the anticipated future agreement that will define the terms for implementing the NCCP/HCP.
- 1.12. Member Agencies means the agencies that are members of the HCPA.
- 1.13. Natural Community Conservation Plan or NCCP means a conservation plan created pursuant to Fish and Game Code, Section 2801, *et seq.*
- 1.14. Natural Community Conservation Planning Act or NCCPA means Fish and Game Code, Section 2801, *et seq.*
- 1.15. NCCP/HCP or Plan means the HCPA's joint natural community conservation plan and habitat conservation plan prepared pursuant to the requirements of Fish and Game Code, Section 2800, *et seq.* and 16 U.S.C. Section 1539 (a)(2)(A).
- 1.16. NEPA means the National Environmental Policy Act, title 14, U.S.C.A., section 4321, *et seq.*
- 1.17. Planning Area means the geographic area the HCPA proposes to address in the NCCP/HCP as depicted / described in Exhibit B.
- 1.18. USFWS means the United States Fish and Wildlife Service.

2. Background

2.1. Natural Community Conservation Planning Act

The Natural Community Conservation Planning Act ("NCCPA") was enacted to form a basis for broad-based planning to provide for effective protection and conservation of the state's wildlife resources while continuing to allow appropriate development and growth. The purpose of natural community conservation planning is to provide for the conservation of biological diversity by protecting biological communities at the ecosystem or landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. A Natural Community Conservation Plan identifies and provides for the

measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.2. Purposes of Planning Agreement

The purposes of this Agreement are to:

- Define the Parties' goals and obligations with regard to development of the NCCP/HCP;
- Agree on the geographic scope of the Planning Area;
- Identify a preliminary list of natural communities and species expected to be found in those communities, that are intended to be the initial focus of the NCCP/HCP;
- Identify preliminary conservation objectives for the Planning Area;
- Ensure the inclusion of independent scientific input into the NCCP/HCP development process;
- Ensure coordination between the Wildlife Agencies and between the Wildlife Agencies and the HCPA;
- Establish an interim process during NCCP/HCP development that encourages conditions conducive to achieving the preliminary conservation objectives; and
- Ensure the inclusion of public participation and outreach into the NCCP/HCP development process.

2.3. Regulatory Goals

The HCPA intends that the NCCP/HCP will allow for development and growth compatible with the NCCP/HCP's fundamental goals and consistent with State and federal legal requirements. By agreeing to assume responsibility for development of the NCCP/HCP, and committing staff and financial resources for that purpose, the HCPA intends for the NCCP/HCP to yield numerous benefits in addition to natural resource conservation, including greater regulatory efficiency, streamlining and certainty.

2.3.1. Compliance with the California Endangered Species Act and the federal Endangered Species Act.

The Planning Area contains valuable biological resources, including native species of wildlife and their habitat. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under the CESA, the FESA, or both CESA and FESA. The Parties intend to develop a conservation plan that satisfies the requirements for a habitat conservation plan under Section 10 (a)(2)(A) of FESA, 16 U.S.C. § 1539 (a)(2)(A), and a natural community conservation plan under the NCCPA (the "NCCP/HCP"). The NCCP/HCP is intended to serve as the basis for take permits pursuant to section 10(a) (1)(B) of FESA and section 2835 of the NCCPA. The NCCPA provides that after the approval of a NCCP, DFG may permit the taking of any identified species, both listed and

non-listed, whose conservation and management is provided for in the NCCP. Take authorization during the interim period for species listed pursuant to CESA shall be provided pursuant to CESA. FESA provides that after the approval of a HCP, USFWS may permit the taking of species covered in the HCP if the HCP meets the requirements of section 10(a)(2)(A) of FESA. Take authorization for listed species covered in the HCP is effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to FESA. Take authorization during the interim period for species listed pursuant to FESA shall be provided pursuant to individual permits issued pursuant to section 10(a)(1)(B) of FESA.

2.3.2. Concurrent Planning for Wetlands and Waters of the United States

The HCPA intends to address impacts to wetlands and waters of the United States in the NCCP/HCP to be consistent with, or meet the requirements of, the Clean Water Act regarding Covered Activities. The HCPA further intends to address in the NCCP/HCP impacts resulting from changes to the bed, bank or channel of rivers, streams and lakes within the Planning Area to meet the requirements of and obtaining all necessary authorizations under Fish and Game Code Section 1601 or Section 1603 for Covered Activities. Based on the NCCP/HCP, the HCPA may seek programmatic permits or authorizations under the Clean Water Act and Section 1601 (or Section 1603) as necessary for Covered Activities. However, such programmatic permits or authorizations are not necessary for approval of the NCCP/HCP or for issuances of incidental take permits.

2.3.3. Section 7 of FESA

To the extent allowed under law, the Parties intend that the mitigation and minimization measures included in the NCCP/HCP, once approved by the USFWS and included as a condition of federal incidental take permits to the Parties, will be adopted by the USFWS and incorporated into future Section 7 consultations between the USFWS and the United States Army Corps of Engineers, the United States Bureau of Reclamation, or other applicable federal agencies regarding Covered Activities that may adversely affect species covered by the NCCP/HCP.

2.3.4. Assurances

The Parties anticipate that the USFWS will provide assurances consistent with their regulatory authority upon issuance of federal incidental take permits to the Member Agencies. Specifically, the Parties expect that if the NCCP/HCP meet the criteria for issuance of an incidental take permit under Section 10(a)(2)(A) of FESA, the Member Agencies will receive the assurances identified in the "no surprises" regulations of the United States Department of the Interior at 50 C.F.R. 17.22(b)(5) and 17.32(b)(5) for all

species adequately covered under the NCCP/HCP. Such assurances would be provided upon approval of the NCCP/HCP and issuance of federal incidental take permits to the Member Agencies. In addition, the Parties expect that if the NCCP meets the criteria for a NCCPA take permit under Section 2835 the Fish and Game Code, DFG will provide assurances consistent with its statutory authority upon approval of the Plan and issuance of NCCPA take permits to the Member Agencies. Under Section 2820(f) of the NCCPA, DFG may provide assurances for plan participants consistent with long-term conservation and associated implementation measures in an approved NCCP. In order to ensure that assurances are legally binding, any such provisions will be included in an implementation agreement negotiated between the Member Agencies and the Wildlife Agencies.

2.4. Planning Goals

The NCCP/HCP planning goals include the following:

- Allow appropriate and compatible economic growth and development that is consistent with applicable laws;
- Provide a basis for permits and authorizations necessary to lawfully take certain native species of plants and wildlife, including species that have been listed as threatened or endangered pursuant to the terms of FESA and/or CESA;
- Provide for issuance of take permits for other species that are not currently listed, but which may in the future be listed;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of FESA, CEQA, NEPA, NCCPA and other applicable laws and regulations relating to biological and natural resources within the Planning Area so that public and private actions will be governed equally and consistently, thus reducing delays, expenses and regulatory duplication;
- Compensate willing private landowners for the conservation of natural resources on their property through the purchase of land and/or conservation easements;
- Provide a less costly, more efficient alternative project review process which results in greater conservation values than the current project-by-project, species-by-species review and regulatory regime; and
- Provide a “tool box” approach for compliance to maintain flexibility for project proponents.

2.4.1. Departure from Project-by-Project Planning Approach.

The Parties agree that the process of undertaking habitat conservation planning on a project-by-project basis is costly and inefficient. All Parties expect that the development of a successful Plan will be a less expensive and more effective method of complying with the species conservation

requirements of ESA, NCCPA, and the environmental review processes of NEPA and CEQA than a project-by-project approach. The Parties also agree that a successful Plan can be better for both habitat conservation and economic development than individual project permitting.

2.4.2. Covered Activities

Covered Activities are the activities that will be addressed in the NCCP/HCP and for which the HCPA's Member Agencies will seek an NCCPA take permit pursuant to Fish and Game Code, Section 2835 and an incidental take permit pursuant to Section 10 of FESA. Covered Activities under the Plan will be limited to land uses over which the Member Agencies have land use authority except they may also include certain agricultural activities and adaptive habitat management and monitoring activities in the Planning Area. The Parties intend that permits issued based on the Plan will authorize Covered Activities in the Planning Area to be carried out in compliance with NCCPA and FESA subject to the limitations and conditions identified in the Plan.

2.4.3. Natural Communities and Covered Species

The Parties intend for the NCCP/HCP to address the impacts of taking likely to result from Covered Activities in the Planning Area on natural communities, on certain endangered and threatened species listed under FESA or CESA, and on certain other unlisted species. The purpose of addressing unlisted species will be to provide for the conservation and management of the species and to help ensure that such species do not become listed as threatened or endangered under FESA or CESA. Addressing unlisted species in the NCCP/HCP is also intended to avoid the need to develop new measures or restrictions to mitigate for impacts should such species become listed in the future. It is the Parties' goal to include, at a minimum, measures sufficient to enable the USFWS to issue incidental take permits for certain unlisted species. A preliminary list of natural communities, and the endangered, threatened, candidate, or other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the NCCP/HCP is attached as Exhibit A. Exhibit A identifies the species that the HCPA and the Wildlife Agencies will initially evaluate for inclusion in the NCCP/HCP. Exhibit A does not necessarily represent the final list of species and natural communities that will be addressed in NCCP/HCP or included in incidental take permits issued by the Wildlife Agencies.

3. Planning Area and Participating Parties

3.1. Planning Area

The area to be comprised by the NCCP/HCP ("Planning Area") is the eastern portion of Contra Costa County depicted in Exhibit B and includes approximately 190,000 acres. The Planning Area includes the watersheds

draining the eastern side of Mount Diablo and portions of the watersheds draining the northern side of Mount Diablo. The Planning Area encompasses a variety of land uses and vegetation types. Rainfall generally decreases from west to east. The topography is more rugged and hilly in the western and southern areas. Existing development and irrigated agriculture predominate in the northern and eastern portions of the Planning Area. Grazed annual grasslands are the most common landcover in the undeveloped portions of the Planning Area. Other natural communities present include oak woodland, oak savannah, chaparral/scrub, riparian scrub and woodland, and permanent and seasonal wetlands. Though some tidal wetlands may exist within the Planning Area, the NCCP/HCP will not attempt to address or seek a permit for impacts to these habitats because tidal wetlands support a distinct suite of species not present elsewhere in the Planning Area and the Member Agencies do not wish to cover activities in such habitats through the NCCP/HCP.

3.2. The HCPA and its Member Agencies

The HCPA is a Joint Powers Authority consisting of the following seven Member Agencies:

- Contra Costa County
- City of Brentwood
- City of Clayton
- City of Oakley
- City of Pittsburg
- Contra Costa Water District, and
- East Bay Regional Park District.

The objective of the HCPA is to manage and fund the development of a joint habitat conservation plan and natural community conservation plan for submission to the governing boards of the Member Agencies and ultimately to the USFWS and the DFG. As part of this planning process, the HCPA is committed to undertaking a collaborative, systematic approach to protecting East Contra Costa County's ecologically significant resources, open space, and agricultural lands, and to ensuring that compatible economic and development activities comply with applicable federal and State environmental laws. The HCPA and its Member Agencies are the local sponsors of the NCCP/HCP.

3.3. California Department of Fish and Game

DFG is the agency of the State of California authorized and empowered to act as trustee for wildlife (as defined in Fish and Game Code Section 711.2) of the State on behalf of its residents. DFG is authorized to develop and approve NCCPs pursuant to the NCCPA, to administer and enforce CESA and other provisions of the Fish and Game Code, and to enter into

agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCPA.

3.4. United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized and empowered by Congress to administer and enforce FESA with respect to terrestrial wildlife, non-anadromous fish species, insects and plants, and to enter into agreements with States, local governments, and other entities to conserve threatened, endangered, and other species of concern. This agreement requires coordination with federal Wildlife Agencies with respect to the federal ESA.

4. Preliminary Conservation Objectives

The preliminary conservation objectives of the plan are to:

- Provide for the protection of species, natural communities and ecosystems on a landscape level;
- Protect identified species and their habitats;
- Identify biologically sensitive habitat areas;
- Conserve habitat, and thereby contribute to the recovery of threatened, endangered and other identified plant and animal species covered by the plan ("Covered Species");
- Reduce the necessity to list additional species;
- Set forth specific habitat-based goals and objectives expressed in terms of the amount and function of various types of habitat to be acquired, protected and preserved;
- Estimate the extent of impacts to species from incidental take caused by Covered Activities;
- Provide an adaptive management and monitoring strategy for Covered Species and natural communities for the duration of the NCCP/HCP.

5. Planning Process

The Parties and Wildlife Agencies intend that this Agreement will fulfill the NCCPA requirements pertaining to planning agreements and will establish a mutually agreeable process for preparing the NCCP/HCP that fulfills the requirements of the NCCPA and FESA. The terms of this Agreement will be construed in a manner consistent with this intent.

5.1. NCCPA Planning Process

The process used to develop the NCCP/HCP will incorporate independent scientific input and analysis, and include extensive public participation, with ample opportunity for comment from the general public, as well as solicited advice from key groups of stakeholders.

5.1.1. Oversight and Coordination

The Executive Governing Committee (“EGC”) of the HCPA will oversee development of the NCCP/HCP. EGC meetings will be open to the public and public notice will be provided at least 72 hours before each meeting. Under the EGC’s direction, the County will act as the “Coordinating Agency” and will supervise and coordinate the conservation planning process and day-to-day development of the NCCP/HCP. The County’s responsibilities include:

- Informing the EGC about progress in the NCCP/HCP development;
- Presenting key issues or decisions to the EGC for its resolution;
- Consulting with the Wildlife Agencies;
- Supervising staff and consultants developing the NCCP/HCP;
- Coordinating with and receiving input from the Coordination Group and the Science Advisors;
- Coordinating public outreach and participation; and
- Serving as the Wildlife Agencies’ point of contact with the HCPA during implementation of this Agreement.

5.1.2. Best Available Scientific Information

The NCCP/HCP will be based on the best available scientific information, including:

- Principles of conservation biology, community ecology, landscape ecology, individual species’ ecology, and other scientific knowledge and thought;
- Information about all natural communities and species of federal, State and local concern on lands throughout the Planning Area; and
- Advice from well-qualified, independent scientists.

5.1.3. Data Collection

The Parties agree that information on a wide range subjects is important for preparation of the NCCP/HCP. Priority for data collection has been given to the data essential to address conservation requirements of natural communities and proposed Covered Species. Comprehensive and uniform information on vegetation and landcover in the Planning Area is a key component of the data that have been collected to assist with preparation of the NCCP/HCP. A summary of the landcover classification system used for the NCCP/HCP is presented in Exhibit A. The science advisory process and analysis of existing information have helped to define data collection needs and have revealed data gaps that will be addressed as the plan develops. All data collected by the HCPA for the preparation and implementation of the plan, that are not proprietary data of some other individual or organization, will be made available to the Wildlife Agencies, if requested, in a digital format.

5.1.4. Independent Scientific Input

The Parties intend that preparation of the NCCP/HCP will be guided by independent scientific input and analysis. For that purpose, an independent Science Advisory Panel has been convened by the HCPA. The role of the Science Advisory Panel is to, at a minimum, provide recommendations, advice, and guidance on 1) scientifically sound conservation strategies for species and natural communities proposed to be covered by the plan; 2) reserve design principles that addresses the needs of species, landscapes, ecosystems, and ecological processes in the Planning Area proposed to be addressed by the Plan; 3) management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the plan; and 4) data gaps and uncertainties so that risk factors can be evaluated. The Science Advisory Panel consists of six scientists and was assembled by the HCPA, in consultation with the Wildlife Agencies, to provide technical expertise on the affected taxonomic groups, larger scale ecological processes, principles of conservation biology, and conservation and land use planning in practice. An independent facilitator supports the work of the Science Advisory Panel by coordinating meetings, framing questions, and assisting with report compilation. The Science Advisory Panel may be asked to provide additional feedback on key issues during preparation of the NCCP/HCP, and may prepare reports regarding specific scientific issues throughout the process, as deemed necessary by the Parties. The HCPA will continue to implement the science advisory process in coordination with the Wildlife Agencies.

5.1.5. Public Participation

The NCCP/HCP will be prepared in an open and transparent process, with input from concerned citizens. The process used to prepare the NCCP/HCP will provide for thorough public review and comment.

5.1.5.1. Coordination Group

The Coordination Group is a defined stakeholder committee charged with synthesizing input from a variety of sources and providing recommendations and advice to the EGC. The Coordination Group consists of Member Agency staff, staff from other involved agencies, including the Wildlife Agencies, and invited stakeholders. The EGC has invited representatives from approximately 15 organizations to serve on the Coordination Group. The invited stakeholders represent a diverse cross-section of the interests and views of the community, including representatives of landowners, developers, and conservationists. The role of the invited stakeholders includes representing the interests of their organization at meetings and reporting on development of the NCCP/HCP to other members of their organization on a regular basis. The Coordination Group meets

approximately monthly. All such meetings are open to the public and provide for public comment.

5.1.5.2. Outreach

The HCPA, in concert with the Coordination Group, will provide access to information for persons interested in the plan, with an emphasis on obtaining input from a balanced variety of public and private interests representing State and local governments, landowners, conservation organizations, developers, agricultural organizations, and the general public. The Parties expect and intend that public outreach regarding preparation of the NCCP/HCP will be conducted largely by and through meetings of the HCPA, including the EGC and the Coordination Group, both of which are open public meetings with opportunities for public comment. In addition, Member Agencies will include periodic briefings to their city councils or governing boards at public meetings with opportunities for public comment. Other outreach efforts will include maintenance of a project website, invited presentations to interested organizations, and occasional public workshops.

5.1.5.3. Availability of Public Review Drafts

Any draft document associated with the NCCP/HCP that is being considered for adoption by a Member Agency will be available for public review and comment for a minimum of 60 days prior to adoption of that draft document. Preliminary public review documents not considered for adoption shall be made available by a Member Agency a minimum of 10 working days prior to any public hearing addressing these documents. The Parties expect to fulfill this obligation by distributing the draft NCCP/HCP and implementing agreement with the draft Environmental Impact Report prepared for the NCCP/HCP pursuant to CEQA and the draft Environmental Impact Statement prepared for the NCCP/HCP pursuant to NEPA. Other public review documents including draft plans, memoranda of understanding, maps, conservation guidelines, species coverage lists and other planning documents will be made available for public review in a reasonable and timely manner. This obligation will not apply to all documents drafted during preparation of the NCCP/HCPs. However, the HCPA will designate as "public review drafts" various pertinent documents drafted during preparation of the NCCP/HCPs and will make these documents available to the public. The Parties agree the HCPA's internet website (<http://www.cocohcp.org>) will be used to make documents pertaining to the NCCP/HCP available for public review, as well as more traditional means such as distribution and display of hard copies of such documents.

5.1.5.4. Public Hearings

Public hearings regarding the NCCP/HCP development and/or approval will be scheduled to complement or integrate with hearings otherwise required by law.

5.1.6. Interim Process for Project Review

The Parties recognize that before the Wildlife Agencies approve the NCCP/HCP, certain projects and activities requiring take authorization under FESA and/or CESA may be proposed within the NCCP/HCP Planning Area. The Parties intend that these projects and activities will not be unduly delayed because of NCCP/HCP preparation. The Parties also agree that projects, actions and activities proposed or implemented within the NCCP/HCP Planning Area during preparation of the NCCP/HCP ("interim projects") should not compromise the plan's successful development or implementation. In order to identify the effects of interim projects the Parties agree to establish an interim process during the NCCP/HCP development wherein discretionary projects that are within the Planning Area, that are subject to Division 13, commencing with section 21000, of the Public Resources Code, and that potentially conflict with the preliminary conservation objectives contained in Section 4 of this Agreement are reviewed by DFG prior to the time, or as soon as possible after, the project application is deemed complete. For such projects, DFG shall recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and will not preclude important conservation planning options or connectivity between areas of high habitat values. This interim process for project review is described in Exhibit C. Information developed by the Science Advisors will be considered by DFG and other Parties as part of the interim project review.

5.1.7. Protection of Habitat Land During Planning Process

The Parties and the Member Agencies may elect to preserve or restore, either by acquisition or other means, lands in the Planning Area that contain native species of wildlife or natural communities prior to the completion or approval of the NCCP/HCP. The HCPA will consult with the Wildlife Agencies regarding potential lands to be protected. The Wildlife Agencies agree to credit such lands, in accordance with their biological value, toward the land acquisition or habitat preservation requirements of the NCCP/HCP encompassing the lands, once it is approved. However, lands, or portions of lands, acquired or preserved to mitigate the impacts of specific projects or activities that are approved prior to or during plan preparation will only be considered as mitigation for the resulting loss from those projects, and will not be credited toward the habitat requirements of the NCCP/HCP.

5.2. FESA Planning Requirements

FESA's requirement for public participation in the development of habitat conservation plans is a minimum 30-day public comment period for all draft

habitat conservation plans. (16 U.S.C.A., §1539(c); 50 C.F.R. Part 17 and Part 222.) However, in conformance with the HCP Handbook and the 5 Point Policy, the USFWS customarily allows for public comment periods of 60 days, 90 days, or even longer, depending on the scale and complexity of individual habitat conservation plans. Further, the issuance of an incidental take permit by the USFWS is a federal action subject to the requirements of NEPA, which similarly requires a minimum 45 to 60 day public review period for all major federal actions significantly affecting the quality of the human environment. For large-scale, regional, or exceptionally complex habitat conservation plans, the USFWS encourages plan preparers to use informational meetings and external review teams. It is the policy of the USFWS to allow a minimum 90-day public comment period for such habitat conservation plans, unless there is significant public participation during their development.

5.3. Implementation Agreement

The NCCPA requires that any NCCP approved by DFG shall include an implementation agreement that contains provisions for:

- conditions of species coverage;
- the long-term protection of habitat reserves and other conservation measures;
- implementation of mitigation and conservation measures;
- suspension or revocation of the take permit;
- amendment of the NCCP;
- implementation of monitoring and adaptive management;
- oversight of plan effectiveness and funding; and
- periodic reporting.

While the NCCP/HCP is being developed, the Parties will negotiate a draft implementation agreement that will satisfy the requirements of the NCCPA and include specific provisions and procedures for the implementation, monitoring and funding of the NCCP/HCP. A draft of the implementation agreement will be made available for public review and comment with the final public review draft of the NCCP/HCP.

6. Commitment of Resources

6.1. Funding

6.1.1. Local Funding

The HCPA recognizes that, as a prospective applicant for State and federal permits, it has the primary responsibility for developing a plan that meets applicable legal requirements and that, as a result, the development and implementation of the NCCP/HCP must be funded primarily from locally derived sources.

6.1.2. NCCP Funding

DFG agrees to cooperate with the other Parties in identifying and securing, where appropriate, federal and State funds earmarked for natural community conservation planning. DFG makes no guarantee, however, that such funds will be available or that they will be provided for the NCCP/HCP development. The Parties agree that the HCPA will not provide reimbursement to DFG for its participation in the planning phase of the NCCP/HCP as provided in Fish and Game Code, Section 2810, except as provided in Section 7.8.1 of this Agreement. DFG's commitments and obligations under this Agreement are subject to the availability of appropriated funds and the written commitment of funds by an authorized DFG representative.

6.1.3. USFWS Funding

The USFWS agrees to cooperate with the HCPA in identifying and securing, where appropriate, federal and State funds earmarked for habitat conservation planning purposes. Potential federal funding sources may include: the USFWS' Cooperative Endangered Species Conservation Fund, Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of Agriculture or Transportation. The commitments and obligations of the USFWS under this Agreement are subject to the requirements of the federal Anti-Deficiency Act and the availability of appropriated funds. The Parties acknowledge that this Agreement does not require any federal agency to expend its appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

6.2. Assistance from Wildlife Agencies

Subject to funding and staffing constraints, the Wildlife Agencies agree to provide technical and scientific information, analyses and advice to assist the HCPA with the timely and efficient development of the NCCP/HCP.

7. Miscellaneous Provisions

7.1. Public Officials Not to Benefit

No member of or delegate to Congress or the California Legislature will be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

7.2. Statutory Authority

The Parties will not construe this Agreement to require any Party to act beyond, or inconsistent with, its statutory authority.

7.3. Counterparts

This Agreement may be executed by the Parties in several counterparts, each of which will be deemed to be an official original copy.

7.4. Effective Date

The Effective Date of this Agreement will be the date on which it is fully executed.

7.5. Duration

This Agreement will be in effect until the NCCP/HCP is approved by DFG and FWS, but shall not be in effect for more than five years following the Effective Date, unless extended by amendment or terminated.

7.6. Amendments

This Agreement can be amended only by written agreement of all Parties.

7.7. Execution by Member Agencies

Any Member Agency may become a Party to this Agreement by executing it. However, Member Agencies are not required to be Parties to this Agreement.

7.8. Termination and Withdrawal

Any Party may withdraw from this Agreement upon 30 days' written notice to all other Parties, provided the withdrawing party makes all relevant data and materials available to the remaining parties. The withdrawing Party is not required to release data and/or materials that are the intellectual property of an entity other than the withdrawing party. For so long as the Agreement has three or more Parties, it can be terminated only by written agreement of all Parties. If there are only two remaining Parties because of the withdrawal of a Party or for any other reason, either of the remaining Parties may terminate this Agreement upon 30 days' written notice. If a Party terminates its participation, the remaining parties shall conduct a timely assessment of the feasibility of continuing to develop the Plan.

7.8.1. Funding

In the event that State or federal funds have been awarded to a withdrawing party for the NCCP/HCP preparation or implementation, the withdrawing party will return any unspent grant funds to the grantor within 30 days of withdrawing, and provide the remaining Parties with a complete accounting of the use of the funds. In the event of termination of this Agreement, all Parties who received grant funds from another Party will return any unspent grant funds to the grantor within 30 days of termination. None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act apart from and independent of, this Agreement.

SIGNATURES:

Dated: _____, 20__

EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN
ASSOCIATION

By: _____
Jeff Huffaker, Chair
Executive Governing Committee,
East Contra Costa County Habitat
Conservation Plan Association

Dated: _____, 20__

CALIFORNIA DEPARTMENT OF FISH
AND GAME

By: _____
Ron Rempel, Deputy Director
Habitat Conservation Division

APPROVED AS TO LEGAL FORM

By: _____
Michael R. Valentine
General Counsel

Dated: _____, 20__

US FISH AND WILDLIFE SERVICE

By: _____
Wayne White, Field Supervisor
Sacramento Office

**Exhibit A: Preliminary List of Natural Communities and Species
That May be Addressed in the NCCP/HCP and List of Landcover Categories
That Have Been Mapped To Assist Preparation of the NCCP/HCP**

NATURAL COMMUNITIES AND OTHER HABITAT TYPES

Agriculture
Chaparral
Grassland
Oak Woodland
Riparian Woodland/Scrub
Wetlands

SPECIES

Mammals

Townsend's western big-eared bat *Corynorhinus townsendii townsendii*
San Joaquin kit fox *Vulpes macrotus mutica*

Birds

Tricolored blackbird *Agelaius tricolor*
Golden eagle *Aquila chrysaetos*¹
Western burrowing owl *Athene cunicularia hypugea*
Swainson's hawk *Buteo swainsoni*

Reptiles

Silvery legless lizard *Anniella pulchra pulchra*
Alameda whipsnake *Masticophis lateralis euryxanthus*
Giant garter snake *Thamnophis gigas*

Amphibians

California tiger salamander *Ambystoma californiense*
California red-legged frog *Rana aurora draytonii*
Foothill yellow-legged frog *Rana boylei*

Invertebrates

Longhorn fairy shrimp *Brachinecta longiantenna*
Vernal pool fairy shrimp *Brachinecta lynchi*
Midvalley fairy shrimp *Brachinecta mesovallensis*
Vernal pool tadpole shrimp *Lepidurus packardii*

Plants

Mount Diablo manzanita *Arctostaphylos auriculata*

¹ A fully protected species under Section 3511 of the California Fish and Game Code, for which take authorization may not be granted, but which can be included to address its conservation needs in the Planning Area.

Brittlescale *Atriplex depressa*
San Joaquin spearscale *Atriplex joanquiniana*
Big tarplant *Blepharizonia plumosa*
Mount Diablo fairy lantern *Calochortus pulchellus*
Recurved larkspur *Delphinium recurvatum*
Diablo helianthella *Helianthella castanea*
Brewer's dwarf flax *Hesperolinon breweri*
Showy madia *Madia radiata*
Adobe navarretia *Navarretia nigelliformis* ssp. *nigelliformis*

Landcover Categories That Have Been Mapped To Assist Preparation of the NCCP/HCP

alkali grassland
alkali wetland
annual grassland
aquatic
aqueduct
chaparral/ scrub
cropland
landfill
non- native woodland
oak savanna
oak woodland
orchard
pasture
pond
riparian woodland/ scrub
rock outcrops
ruderal
seasonal wetland
slough/ channel
turf
urban
vineyard
wetland (general)
wind turbines

Exhibit B is contained in a separate file.

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Exhibit C: Interim Review Process

I. Purpose: The purpose of the Interim Review Process described herein is to ensure that development/construction projects approved or initiated in the Planning Area before completion of the NCCP/HCP do not compromise the successful implementation of the NCCP/HCP, to facilitate CESA and FESA compliance for interim projects that require it, and to ensure that interim projects are not delayed solely due to preparation of the NCCP/HCP.

II. Notification Process:

- 1) HCPA Member Agencies shall notify DFG and USFWS of proposed development or construction projects in the Planning Area that meet the criteria described in section III of this Exhibit, "Reportable Interim Projects".
- 2) Notification shall occur upon HCPA Member Agency determination that the proposed project is not exempt from California Environmental Quality Act.
- 3) The following information shall be provided:
 - a. The location of the proposed project shall be described on an 11x17, 1:24,000 aerial photo of the site and surrounding area.
 - b. The land cover types present on the site of the proposed development shall be listed. The most current landcover data maintained by the HCPA shall be used to identify the landcover types present.
- 4) DFG and FWS shall each designate one individual to receive notification of interim projects.
- 5) This notification process shall terminate upon completion of the NCCP/HCP or upon termination of the Agreement.

III. Reportable Interim Projects: Proposed development or construction projects, whether conducted by a Member Agency or requiring permits from a Member Agency, that are located in the Planning Area shall be reported as described in section II of this Exhibit, "Notification Process" if they meet all of the following criteria:

- A determination has been made by the Member Agency, on or after the effective date of this Agreement, that the proposed project is not exempt from the California Environmental Quality Act; and
- the proposed project is located in the "Reportable Area" shown in Exhibit D and further explained in section IV of this Exhibit.

Examples of reportable interim projects include, but are not limited to:

- Residential, commercial, and industrial developments requiring an initial study;
- Rural residential projects ("ranchettes") located within the "Reportable Area" indicated on Exhibit D;

- Road construction, road widening, and bridge construction;
- New pipelines and treatment plants;
- Construction of new recreational facilities; and
- Communications services projects such as cellular phone antennas.

Examples of non-reportable interim projects include, but are not limited to:

- Residential, commercial, and industrial developments not requiring an initial study;
- Residential, commercial, and industrial developments not located in the “Reportable Area” indicated in Exhibit D;
- Projects only requiring a building permit;
- Projects that only require permits from the Contra Costa County Department of Agriculture;
- Applications for construction of a second unit on a lot with an existing single family home; and
- Road and infrastructure maintenance.

IV. Reportable Area: The “Reportable Area” shown in Exhibit D was created using the HCPA’s landcover map. Urban, turf, landfill, and aqueduct landcover types inside the County’s Urban Limit Line were designated as “non-reportable”. All other areas were designated as “reportable area”. The HCPA’s landcover map has a minimum mapping unit of 10 acres. Consequently, areas of natural landcover smaller than 10 acres inside urban areas may be identified as “non-reportable” and applications in such areas will not be reported by the HCPA. The landcover map was created using aerial photos taken in May of 2000. The landcover map has been updated to account for new development by reclassifying areas that have received full development entitlements from Member Agencies as “urban” in the landcover map.

V. Coordination on Interim Projects: Representatives from the Parties shall meet as needed to discuss interim projects and coordination with the development of the NCCP/HCP. In addition, the Parties shall periodically confer to determine whether input and analysis provided through the science advisory process should be incorporated into this Interim Review Process. Such input and analysis shall inform the Process, and may be used to evaluate the impacts of interim projects, to develop mitigation measures, or to establish monitoring requirements, as deemed necessary or appropriate by the Parties.

Exhibit D is contained in a separate file.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)
EXECUTIVE GOVERNING COMMITTEE**

DATE: September 18, 2003
TO: Executive Governing Committee (EGC)
FROM: Member Agency Staff
SUBJECT: Section 6 Grant Contract Amendment to Reflect Recent Additional Grant Award

RECOMMENDATION

- 1) CONSIDER AUTHORIZING the Chair or his designee to execute a contract amendment with the California Department of Fish and Game for the receipt of approximately \$80,000 in additional Section 6 grant funds.

DISCUSSION

As was announced at the last EGC meeting, DFG and FWS have approved another Section 6 grant for the HCPA, this most recent grant award being for \$100,000 in FY03 funds. After DFG deducts its overhead, we expect the HCPA to receive \$80,000. The HCPA and DFG recently executed a grant contract for \$267,040. Conversations with DFG indicate that the easiest means for the HCPA to receive the additional \$80,000 would be to amend the existing grant contract to increase the amount to reflect the latest grant. Staff understands that DFG will be prepared to pursue a contract amendment in the very near future, probably well before the next EGC meeting. Because we would like to encumber these funds as soon as possible, staff seeks advance authorization from the EGC for the EGC Chair or his designee to execute a grant contract amendment as described above.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)
EXECUTIVE GOVERNING COMMITTEE**

DATE: September 18, 2003
TO: Executive Governing Committee (EGC)
FROM: Member Agency Staff
SUBJECT: HCPA Budget Discussion and Review (agenda item #7)

RECOMMENDATION

- 1) REVIEW September 18, 2003 HCPA Budget reflecting costs provisionally approved by the EGC in January 2003;
- 2) CONSIDER fund-raising progress and future fund-raising opportunities;
- 3) REVIEW revised contingency strategy outlining options should necessary funding not arrive;
- 4) ACKNOWLEDGE the staff recommendation that the HCPA should continue to pursue a comprehensive, high-quality plan that depends on continued fund-raising success rather than scale back the scope of the project to attempt to complete it with existing financial resources;
- 5) APPROVE September 18, 2003 HCPA Budget;
- 6) MAINTAIN an interim expenditure limit of \$0 on New Task #3 proposed in January 2003 (Additional Covered Species), unless dedicated outside funds are received for this purpose; MAINTAIN an interim expenditure limit of \$35,000 on New Task #2 proposed in January 2003 (NCCP Upgrade); REMOVE other interim expenditure limits on new tasks that were set in January 2003;
- 7) AUTHORIZE staff to issue a modified Notice to Proceed letter to Resources Law Group raising the interim payment limit on that \$66,500 contract by up to \$15,000, from the current interim payment limit of \$10,000 to a new limit of up to \$25,000, to initiate work on the Implementation Agreement.
- 8) AUTHORIZE staff to further raise the interim payment limit for Jones and Stokes if outside funds are received for New Task #3 (Additional Covered Species) by an amount equal to the amount of funds received.
- 9) ESTABLISH an overall additional fund-raising goal of \$365,000, and DIRECT staff to continue to pursue grants and outside funding sources;

DISCUSSION

Financial status overview: As of July 27, 2003, the HCPA has expended a total of \$492,742 (including services billed but not yet paid). Total committed and received revenue is approximately \$947,858 while total revenue received is, \$574,056. Our first installment of Section 6 grant funds is expected anytime (our first \$110,000 invoice has been approved by Fish and Game Region 3 and is being processed in Fish and Game Headquarters). Attached please find a revised HCPA Budget with summary information on revenues and previously budgeted expenditures. An updated, proposed fund-raising strategy and a transaction summary from HCPA accounts are also provided.

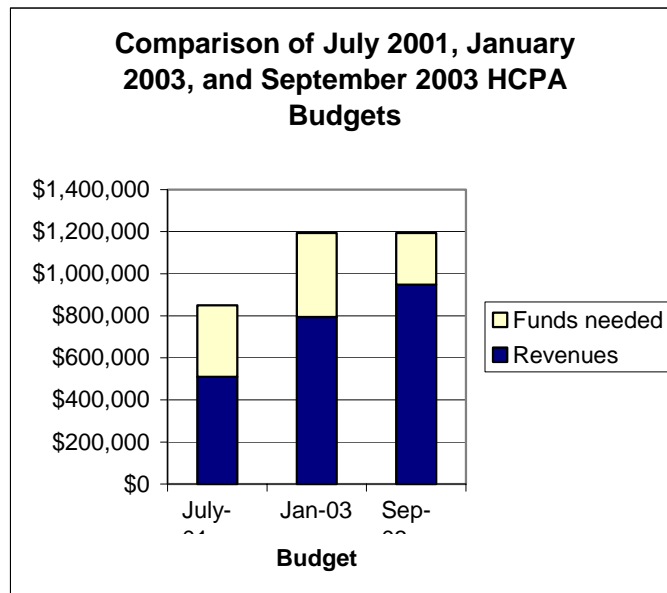
The revised HCPA Budget is identical to the HCPA Budget provisionally approved by the EGC in January 2003 with respect to estimated costs, but has been updated to reflect new revenues and new expenditures. In other words, staff continues to estimate a \$1,191,000 budget for the

project and continue to recommend that we set our fund-raising toward this goal plus a 10% contingency reserve. This staff report and the related attachments discuss the Budget and Fund Raising Strategy in more detail.

Fund-raising update: Since the January 16, 2003 EGC where the \$1,191,136 HCPA Budget was provisionally approved, the HCPA has raised approximately \$154,000 in new revenue. Sources of new revenues include the following:

- Approximately \$39,000 in reprogrammed FY02 Section 6 grant funds from the U.S. Fish and Wildlife Service (“USFWS”) and the California Department of Fish and Game (“CDFG”) following the cancellation of a grant to a neighboring County;
- \$35,000 from a grant from the County Fish and Wildlife Propagation Fund to fund New Task #4 (Biology Upgrade: Small Scale Features) as outlined in the January 2003 Budget staff report;
- Approximately \$80,000 in FY03 Section Grant funds from the USFWS and CDFG.

Budget history: As illustrated in the chart below, the HCPA project has had less revenue than estimated expenses from inception. Likewise fund-raising efforts have had a consistent success level.



Proceed with comprehensive project or scale back scope of work to attempt to complete project with existing revenues? (recommendations #4 and #5): The EGC provisionally approved the HCPA budget in January 2003 and scheduled a budget review nine months later so that the provisionally approved budget augmentations could be analyzed in light of additional fund-raising information. The nine-month budget review is upon us, and a final decision is now needed on the budget. As we are nearing the latter stages of the planning process, opportunities for adjusting the scope of work to reflect revenues are closing fast. The Budget decision the EGC makes today will set a course that can only partially be adjusted in the future (though some flexibility will remain, see Contingency Strategies below).

HCPA Member Agency staff jointly recommend that the HCPA proceed with the comprehensive project as planned and rely on the success of future fund-raising efforts to make up the gap between existing revenues and estimated total expenses. The alternative, reducing the scope of

the project, would be extremely difficult. There are no superfluous components and those components that could be considered non-essential (such as the NCCP Upgrade or focused work with wetlands permitting agencies) could reduce the likelihood that the project achieves its goals. State and federal regulatory agencies and the involved stakeholders have made evident their expectations for a comprehensive, high-quality product, and cost-cutting measures could endanger the relative good-will the project has enjoyed thus far.

Further, fund-raising for this project has been successful throughout the project, with more than \$150,000 raised in the last nine months alone. While no one funding source seems likely to solve our entire budget shortfall (the request to Congress is now a longshot for this year; if even attempted next year, it would far from a sure thing), the updated Fund Raising Strategy identifies a variety of promising and proven opportunities. We have enough committed revenue to keep the project active for at least 9 months (and the interim payment limits on contracts will ensure that the HCPA incurs no debt and requests no work for which it doesn't have adequate funding in the bank). Funds in hand are also sufficient to produce preliminary and formal drafts of the HCP/NCCP and the EIR/EIS. With these significant milestones behind us, the path to completing the project will be clear and fund-raising requests can very strongly justified.

Revised Contingency Strategy: The analysis below documents potential approaches for addressing funding shortfalls and reaching interim milestones. Each of the three scenarios described could be achieved even with EGC approval of the revised EGC Budget. If the EGC should choose to scale back the scope of the project, more radical cost-cutting measures could be suggested.

Scenario	Hypo- thetical Reduced Funding Level	Cuts needed from \$1,191,000 budget	Tasks to consider deferring or cutting	Incre- mental Cost Savings	Comments
A: Complete Formal Draft HCP/NCP and Draft EIR/EIS (no extra species)	\$950,000	\$241,000	Wetlands permitting reserve	\$35,000	We can accomplish Scenario A with existing revenues. We would have a very tangible product (i.e. formal drafts of everything) and a clear path toward completing the project, so fund-raising to complete the project should be possible. Deferred tasks could be incorporated into final documents (though it would be challenging to add species after Draft HCP)
			Remainder of NCCP upgrade (item #2) not authorized for expenditure	\$41,000	
			Final version of HCP/NCCP and EIR/EIS	\$52,000	
			Final version of Implementation Agreement and some general legal consultation	\$20,000	
			6 months J&S meetings and mngmt	\$20,000	
			6 months County project mngmt	\$25,000	
			Augmentation item #3: additional covered species	\$48,000	
B: Complete Formal Draft HCP/NCP and Draft EIR/EIS & Add Cover Extra Species	\$1,000,000	\$191,000	Wetlands permitting reserve	\$35,000	Identical to Scenario A but assumes \$48,000 in dedicated funds is received to cover six additional species.
			Remainder of NCCP upgrade (item #2) not authorized for expenditure	\$41,000	
			Final version of HCP/NCCP and EIR/EIS	\$52,000	
			Final version of Implementation Agreement and some general legal consultation	\$20,000	
			6 months J&S meetings and mngmt	\$20,000	
			6 months County project mngmt	\$25,000	
C: Complete Final HCP/NCP and Final EIR/EIS (partial NCCP upgrade, no extra species, wetlands permits deferred)	\$1,075,000	\$116,000	Wetlands permitting reserve	\$25,000	Scenario C illustrates the lowest cost alternative for completing the HCP. Partial NCCP upgrade and deferring specific work on wetlands permits would be concerns (though the wetlands component could be a subsequent step)
			Remainder of NCCP upgrade (item #2) not authorized for expenditure	\$41,000	
			Augmentation item #3: additional covered species	\$48,000	

Interim expenditure limits (recommendation #6): The Budget action approved by the EGC in January included the establishment of interim expenditure limits on five of the six new tasks or budget augmentations that were provisionally approved. Those interim expenditure limits were intended to ensure that non-time-sensitive work on these new tasks was delayed to enable future flexibility to meet a \$975,000 contingency scenario should fund-raising be unsuccessful. Given the staff recommendation that the HCPA continue to pursue a comprehensive project and given the advanced stage of the project, adjustments to the expenditure limits are recommended. For a detailed explanation of the interim expenditure limits as set in January on the six new tasks and a description of the recommended changes, please see the attached table (“Update and Recommendations Regarding Budget Augmentations Provisionally Approved in January 2003”). Of the six new tasks, four are now recommended for full funding (or have already been completed), and two are recommended to retain the existing expenditure limit. These recommendations will ensure that all three contingency scenarios described above will continue to be attainable.

Interim payment limit for Resources Law Group (“RLG”) (recommendation #7): The HCPA maintains interim payment limits on contracts to account for the fact that our project is not yet fully-funded. Interim payment limits ensure that consultants perform no work that cannot be paid for with existing funds. When the RLG contract for \$66,500 was approved in January 2003, an interim payment limit of \$10,000 was set to cover assistance in preparing the NCCP Planning Agreement and general consultation to the HCPA. The Planning Agreement is now complete and RLG will need to begin work soon on drafting an Implementation Agreement. An increase of up to \$15,000 to the interim payment limit is recommended to enable such work to begin. With EGC authorization, when funds are available in the HCPA account, staff would issue a revised Notice To Proceed letter to RLG raising the limit by an appropriate amount less than or equal to \$15,000.

Interim payment limit for Jones and Stokes (“J&S”) (recommendation #8): In January 2003, the EGC authorized staff to raise the J&S interim payment limit if dedicated funds were received for new tasks #3 and #4 (Additional Covered Species and Biology Upgrade: Small Scale Features). Funds were received for new task #4, the payment limit was increased, and the work has been performed. Funds have not yet been received for new task #3. J&S staff has indicated that new covered species could be added to the plan following completion of the preliminary draft HCP/NCCP at the same cost as previously estimated. Staff plans to continue to seek such funds. Recommendation #8 simply clarifies that prior EGC direction regarding the payment limit and new task #3 remains in effect.

Fund-raising (recommendation #9): Staff recommends that the EGC set a fund-raising goal of \$365,000 to cover the shortfall between existing revenues and the HCPA’s estimated budget of \$1,191,136 plus a 10% contingency. Staff further seeks direction and authorization to pursue to any and all viable funding opportunities, as summarized in the Fund Raising Strategy on the reverse side of the HCPA Budget.

EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN ASSOCIATION

Budget

this page has been superceded

Provisionally Approved on January 16, 2003

(actual expenditures and deposits have been updated thru July 27, 2003; updates are shaded)

REVENUE (Current)

	<u>Approved</u>	<u>Deposited in HCPA account</u>
CCWD	\$325,000	\$325,000
Route 4 Bypass	\$114,056	\$114,056
City of Clayton	\$11,762	\$10,000
EPA Grant (Approved)	\$75,000	\$50,000
CCWD (FESA Map Transfer)	\$40,000	\$40,000
County Fish and Wildlife Committee	\$35,000	\$35,000
FWS/CDFG Section 6 Grants (approved)	\$347,040	<u>0</u> ¹
Total current revenue	\$947,858	\$574,056

EXPENSES (estimated and actual)

	<u>Total estimated²</u>	<u>Billed to date</u>
Jones & Stokes (Project Consultant)	\$925,536	\$392,755
County - Coordinating Agency	\$150,000	\$70,000 ³
Independent Science Review (including J&S)	\$45,000	\$28,487
Legal support from Resources Law Group	\$66,500	\$0
Multi-county \$ request to Congress (IEH)	\$1,500	\$1,500
Business Expenses	<u>\$4,600</u>	<u>\$0</u>
Total	\$1,193,136	\$492,742
10% contingency reserve	<u>+ \$119,314</u>	
Total estimated expenses + reserve	\$1,312,450	
Current revenue	- \$947,858	
Additional funding needs (total)	\$364,592	
Reserve funds committed by CCWD ⁴	<u>- \$32,500</u>	
Additional funding needs(minus CCWD contrib.)	\$332,092	
Non-CCWD portion of contingency reserve	<u>- \$86,814</u>	
Additional funding needs (w/out reserve)	\$245,278	
Optional task: additional covered species	- \$48,000	
Additional funding needs (w/out optional task)	\$197,278	

¹ Grant contract signed by HCPA. To be billed incrementally over a 6 month period.² The EGC has approved interim expenditure limits in conjunction with the provisionally approved expenditure estimates. The interim expenditure limits collectively ensure flexibility to reduce the expenditure budget to \$975,000 should fund-raising be unsuccessful.³ Rough estimate only. County has not invoiced in many months to assist with cash flow balance.⁴ Article 14 of the HCPA Agreement provides that, if outside funding cannot be found, CCWD will contribute half of contingency funds up to a maximum contribution of \$32,500 to the contingency reserve.

Fund Raising Strategy and Progress Update: Target = \$365,000

Potential Source	Amount to be Requested	Background/Update	Dead-line	When may we know status?	When may we receive \$?
1) Six-County request to Congress for FY'04 (try again for FY05?)	\$500,000	Despite significant effort, doesn't look good. Last hope is Feinstein in Conference Committee. Any plans for next year will be discussed at next EGC.	N/a	Sept. 2003	Spring 2004
2) Augment Section 6 grant awarded this year with Shasta County funds(FY03)	\$200,000	Shasta County won't be using its \$200K grant. USFWS has reprogrammed for other states. Miller's staff is enquiring on our behalf.	N/a	August 2003	Fall 2003
3) Section 6 grant, FY04 (only possible if item #1 is unsuccessful)	\$365,000	Pre-proposal, due in October, will establish how much \$ CDFG will allow us to request. Full proposal will likely be due in January 04.	Jan 2004	July 2004	Summer /Fall 2004
4) Development community (for enhanced permit coverage (additional covered species)(budget augmentation item #3)	Up to \$48,000	Initial conversations have been held with representatives of the development community. No immediate keen interest. However, there is understanding of the importance of covering a full range of species, and we have more time to pursue this than we previously thought.	Jan 2004	Jan 2004	Feb 2004
5) CALFED Bay-Delta Program	\$365,000	Working with Carl Wilcox and CCWD staff to explore this approach		??	
6) Augmentation of EPA wetlands grant;	\$75,000	Originally applied for \$125K, but received \$75K & was told future augmentation possible. EPA now hesitant on HCPs due to experiences elsewhere, though EPA has indicated we may apply.	Oct 2003 (prob)	Spring 2004	Summer /Fall 2004
7) Farmland Conservancy Program (CA Dept. of Conservation)	\$50K	Planning is not their focus, but is possible. Farmland conservation, not habitat, is main priority. DOC staff to advise.	rolling	Fall/ Winter 2003	Spring/ Summer 2004
8) National Fish & Wildlife Foundation	\$50K	Rejected our pre-proposal previously, but indicated it was premature. They granted \$50K to South Sac HCP years ago.	Oct 2003	April 2004	Summer /Fall 2004
9) Small local grants: East Bay Community Foundation, CA Trails and Greenways	?	Contributed \$1K to Biodiversity	?	?	?
10) SFRWQCB Supplemental Environmental Programs	N/a	When punishing violators, SFRWQCB requires contributions to environmental programs. No violations at moment, but HCP is on the list.	N/a	N/a	N/a
11) Contributions as part of mitigation package; including public infrastructure projects.	N/a	Past example is SR4 Bypass Authority, who contributed \$100K to the HCPA for Phase 1 of that project.	N/a	N/a	N/a

Update and Recommendations Regarding Budget Augmentations Provisionally Approved in January 2003

Item #	Task	Cost	Rationale	Recommendation Approved By EGC in January 2003	Jan-03 Expenditure Limit	Sep-03 Recommended Changes
1	Previously approved and/or unavoidable budget adjustments	\$ 31,592	These costs either relate to tasks already approved or are essential to complete the project.	Augment budget to include these expenses and authorize expenditures within interim contract payment limit.	\$31,592	no change
2	NCCP Upgrade	\$ 76,454	The state amended the NCCP Act in 2002, adding additional requirements. \$260,000 in grant funding is tied to our preparation of an NCCP as well as an HCP.	Augment budget to include these expenses and authorize expenditures up to \$35,000 within interim contract payment limits.	\$35,000	no change
3	Enhanced Endangered Species Act Coverage: Additional Covered Species	\$ 48,000	The Science Advisory Panel and others have identified additional at-risk species that could be affected by impacts we may cover in the HCP/NCCP. The habitat requirements of these species must be studied and included in the plan if our permit is to cover them. The EGC may consider adding all 7 species, only some species, or none.	Provisionally augment budget to include these expenses. Authorize expenditures if dedicated funding is secured. If only partial funding is secured, authorize staff to prioritize additional species and add as many as can be funded.	\$0 *	no change
4	Biology Upgrade: Small Scale Features	\$ 35,000	The Coordination Group and Science Advisory Panel have recommended that our biological inventory be augmented with additional mapping of small scale features such as alkali grasslands and wetlands. This additional work will strengthen the biological foundation of our plan.	Provisionally augment budget to include these expenses. Authorize expenditures if dedicated funding is secured.	\$0 *	\$35,000 received and spent
5	Enhanced Public Involvement	\$ 64,590	Experience with Phase 1 of the project suggests that more meetings and interim products will be necessary. Enhanced public involvement in shaping the plan will improve the quality and acceptability of work products, increase the likelihood that the plan will ultimately be accepted and supported by the public.	Augment budget to include these expenses and authorize expenditures of up to \$30,000 within interim contract payment limit. Reconsider remainder in 9 months if fund-raising efforts unsuccessful.	\$30,000	\$64,590 (i.e., remove limit)
6	Increased staff support	\$ 71,500	Additional staff support is needed in the form of general legal support to the HCPA, Congressional lobbying, and increased management work from the Coordinating Agency. The Coordinating Agency has assumed additional responsibilities including meeting facilitation and GIS support. Also, this augmentation returns the Coordinating Agency budget back to the \$150,000 originally forecast when individual agencies joined the HCPA. The cost estimate was lowered in 2001 when it appeared that other member agencies would be able to assist the County.	Augment budget to include these expenses and authorize expenditures of up to \$6,500 within interim payment limit.	\$6,500	\$71,500 (i.e., remove limit)
	TOTAL	\$ 327,136			\$103,092*	\$237,682*

* unless dedicated funding received for items #3 or #4

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)
EXECUTIVE GOVERNING COMMITTEE**

DATE: September 18, 2003
TO: Executive Governing Committee (EGC)
FROM: Member Agency Staff
SUBJECT: Presentation and discussion on preliminary economic analysis on estimated costs of, and possible sources of funding for, implementing the HCP/NCCP.

RECOMMENDATION

- 1) RECEIVE presentation on and DISCUSS preliminary economic analysis on estimated costs of, and possible sources of funding for, implementing the HCP/NCCP.

DISCUSSION

One of the most critical and difficult components of developing an HCP/NCCP is establishing a means for paying for plan implementation. The funding plan must account for all projected expenses over the 30 year term of the plan and identify one or more funding sources reliable enough to assure that the implementing entity can uphold the commitments it will need to make to receive permits from regulatory agencies. Given the uncertainties involved and the controversy that inevitably surrounds money, this is no easy task.

Consequently, project consultants have attempted to raise cost and funding issues as early in the process as possible to allow adequate time for these matters to be understood, analyzed, and debated. The topic has been approached in an iterative fashion, with progress reports on various steps in the analysis presented to the Coordination Group on an almost monthly basis. Given the importance of this topic, Member Agency staff felt the EGC would appreciate an overview of the economic analysis to date.

Three status report memos have been presented to the Coordination Group in the last several months and are attached. Two additional, detailed background reports were presented in January 2003, but are not included in this packet¹. The contents of these three memos are summarized below:

Memo 1: preliminary estimates of land acquisition costs

Memo 2: methods for allocating HCP costs and hypothetical developer fee calculations

Memo 3: preliminary “fair share” cost allocation and hypothetical developer fee scenarios based on hypothetical plan costs

¹ The two detailed background reports on economic issues were a Land Valuation Memo, which included estimates on land prices in the area and comparable sales, and a Funding Source Memo, which provided an overview of how HCPs are typically funded and specific case studies from other planning efforts. These reports are available in the documents section of the HCPA website, www.cocohcp.org, or by contacting staff.

Several caveats should be noted regarding these memos:

- Land acquisition cost estimates are preliminary and could change significantly as acquisition objectives change and the land cost model is refined.
- Cost estimates for plan administration, operations, maintenance, restoration, etc. are still in progress and we have no preliminary figures to report at this time.
- Funding requirements and fee levels are purely hypothetical (i.e. developer fee scenarios are purely hypothetical). For discussion purposes, in many instances, we assumed an overall plan cost of \$300 million, based on the preliminary land acquisition costs and an assumption that other costs might be more than half again as much as land acquisition.
- The HCP could choose to impose different fees for different types of impacts. The possibility for creating such a tiered fee structure has not been overlooked, it has simply been deferred for discussion until after more credible estimates of average fee amounts have been developed.
- For comparison purposes, plan costs and funding sources are presented in terms of current dollar value. Inflation will be considered in subsequent steps. Furthermore, funding is unlikely to arrive only in dollar form. For instance, if public funding sources assist with the purchase of land that satisfies the HCP's conservation requirements, such funds may never flow through the HCP's implementation account. Rather, the HCP may provide matching funds to acquisitions pursued by others (or vice-versa), and the HCP will receive credit for the acres conserved, provided the purchased land is managed according to the provisions of the HCP.



MEMORANDUM

To: East Contra Costa County Habitat Conservation Plan Association

From: Teifion Rice-Evans and Jason Tundermann

Subject: Preliminary Land Cost Model Results; EPS #11028

Date: July 11, 2003

The development of an HCP requires planning-level estimates of the cost of HCP implementation and the identification of equivalent funding sources. This memorandum presents the latest results of our on-going development of a land cost model, including preliminary estimates of total land acquisition costs. This work effort is the result of a collaboration between Economic & Planning Systems (EPS), Jones & Stokes, and Contra Costa County staff. Key inputs to the model include a refined preliminary land value matrix (EPS), the draft conservation goals and strategies (Jones & Stokes) and GIS data and analysis (Contra Costa County). The attached tables present key inputs to and conclusions of the model. The land cost estimates will change as additional land value, conservation strategy, and GIS analysis are conducted.

Land Value Matrix

The land value matrix is presented in **Table 1**. The land value estimates are an expanded version of the estimates presented in EPS' January 16 *Draft Land Valuation Memorandum*. The number of land value categories were expanded to take account of the slope data and to fill in holes left by the prior estimates. The matrix provides average per acre cost estimates for land falling into the twelve different categories. Per acre land values are distinguished based on: (1) location relative to the Urban Limit Line (ULL); (2) development designation; (3) parcel size; and (4) parcel slope. These land values are approximate averages. Individual parcels will have varying values depending on a number of factors, and the value of individual parcels will only be determined by an independent appraisal at the time of a sale. The land value estimates have not been refined since the January 16 memorandum. EPS will conduct additional land value research in the coming months, including further investigation of comments received on the memorandum.

Conservation Area and Acquisition Scenarios

The January 23 Preliminary Draft Conservation Strategy defined the conservation area requirement of about 34,000 acres for the whole HCP. Acreage requirements were then divided between the six zones. **Table 2** shows this division, including about 2,300 acres in Zone 1, 8,750 in Zone 2, 600 acres in Zone 3, 7,000 acres in Zone 4, 8,750 acres in Zone 5, and 6,400 acres in



Zone 6. (As explained below, two different acquisition scenarios were analyzed and small differences in acreages exist between the two scenarios analyzed.)

Within these zones, two different land acquisition options were considered:

- **Scenario 1.** The *Best Conservation Scenario* identified the areas within the zones that provided the greatest conservation benefits and applied the land value matrix to these areas.
- **Scenario 2.** The *Lowest Cost Scenario* identified the areas likely to be the least expensive to acquire and applied the land value matrix to these areas.

Both these scenarios are illustrative. In reality, depending on the location of willing sellers, minimum conservation needs, and funding available, the ultimate area acquired will likely be a mix of the two.

Model Results and Caveats

The application of the land value matrix to the two scenarios results in estimates of total HCP land costs. All figures are in 2003 dollar terms and are for fee title acquisitions. As shown in **Table 2** and **Table 3**, the results include:

- Total HCP land costs are estimated to fall in the **\$138 million to \$172 million** range. The *Best Conservation Scenario* has a total cost of \$172 million, while the *Lowest Cost Scenario* has a cost of \$138 million, a difference of \$34 million. (**Table 2**)
- The key cost differences between the scenarios occur in Zone 2 and Zone 5. The Best Conservation Scenario includes more land inside the Antioch and Byron Airport Urban Limit Lines and selects a larger number of smaller parcels. (**Table 2**)
- Both scenarios purchase over 90 percent of their land outside the ULLs and incur over 75 percent of their costs purchasing this land. The 1,200 additional acres purchased on flat land and inside the ULLs under the *Best Conservation Scenario* accounts for over half of the \$34 million cost difference. (**Table 3**)

These results are preliminary and may change for a number of reasons, including:

(1) adjustments to the total acreage requirements and/or the conservation strategies; (2) inclusion of the possibility of the acquisition of conservation easements; and (3) further research into average land values, including the price of large, remote parcels. For example, the use of a \$4,000 per acre cost for parcels over 120 acres could increase the total land costs by as much as \$25 million.



Table 1
Preliminary Land Value Inputs for Cost Model
East Contra Costa County Habitat Conservation Plan

PRELIMINARY RESULTS

Category #	Size	Slope	Other	Base Per Acre Land Value
<u>OUTSIDE URBAN LIMIT LINE</u>		<u>Whole Parcel</u>		
1.	120 acres+	< 26%	na	\$3,000
2.	40 -120 acres	< 26%	na	\$5,000
3.	10 - 40 acres	< 26%	na	\$20,000
4.	5 - 10 acres	< 26%	na	\$35,000
5.	0 - 5 acres	< 26%	na	\$50,000
6	ALL	> 26%	na	\$3,000
<u>INSIDE URBAN LIMIT LINE</u>		<u>Percentages of Parcel</u>		
7.	na	<15%	Not Now Designated for Development	\$12,500
8.	na	15-26%	Not Now Designated for Development	\$9,000
9.	na	>26%	Not Now Designated for Development	\$3,000
10.	na	<15%	Designated for Development	\$39,000
11.	na	15-26%	Designated for Development	\$26,000
12.	na	>26%	Designated for Development	\$6,000

Sources: East Bay Regional Park District, East County Realtors/ Brokers, First Amercian Real Estate Solutions (FARES) - County Assessor Data, the Trust for Public Land, Available Appraisal Data, and/or EPS real estate analysis; Economic & Plannings Systems, Inc.

Table 2
Preliminary Land Value Estimates by Zone
East Contra Costa County Habitat Conservation Plan

PRELIMINARY RESULTS

Zone	Best Conservation Scenario			Lowest Cost Scenario		
	Acres	Cost	Percent	Acres	Cost	Percent
Zone 1	2,343	\$9,397,783	5%	2,320	\$8,754,312	6%
Zone 2	9,079	\$61,429,961	36%	8,486	\$44,583,689	32%
Zone 3	621	\$3,101,125	2%	611	\$2,355,789	2%
Zone 4	6,969	\$32,007,556	19%	6,736	\$28,070,772	20%
Zone 5	8,936	\$41,115,026	24%	8,557	\$29,057,826	21%
Zone 6	6,404	\$25,077,219	<u>15%</u>	6,372	\$24,849,626	<u>18%</u>
Total	34,352	\$172,128,669	100%	33,082	\$137,672,015	100%

Sources: Contra Costa County; Jones & Stokes; Economic & Planning Systems, Inc.

Table 3
Preliminary Land Value Inputs for Cost Model
East Contra Costa County Habitat Conservation Plan

PRELIMINARY RESULTS

Category #	Size/ Slope	Best Conservation Scenario			Lowest Cost Scenario		
		Acres	Cost	Percent	Acres	Cost	Percent
<u>OUTSIDE URBAN LIMIT LINE</u>							
1.	120 acres+; <26 %	23,999	\$71,995,643	42%	24,937	\$74,810,652	54%
2.	40 -120 acres; <26 %	6,807	\$34,034,908	20%	6,557	\$32,783,165	24%
3.	10 - 40 acres; <26 %	1,060	\$21,206,398	12%	561	\$11,215,343	8%
4.	5 - 10 acres; <26 %	149	\$5,199,399	3%	0	\$0	0%
5.	0 - 5 acres; <26 %	37	\$1,844,858	1%	0	\$0	0%
6	ALL; >26 %	<u>0</u>	<u>\$0</u>	<u>0%</u>	<u>0</u>	<u>\$0</u>	0%
Subtotal		32,051	\$134,281,206	78%	32,054	\$118,809,161	86%
<u>INSIDE URBAN LIMIT LINE</u>							
Not Designated for Development							
7.	<15%	1,042	\$12,208,152	7%	9	\$105,074	0%
8.	15-26%	257	\$2,061,368	1%	257	\$2,061,368	1%
9.	>26%	303	\$1,775,442	1%	320	\$1,844,251	1%
Designated for Development							
10.	<15%	251	\$9,070,797	5%	73	\$2,359,494	2%
11.	15-26%	448	\$12,731,704	7%	448	\$12,731,704	9%
12.	>26%	0	\$0	0%	<u>0</u>	<u>\$0</u>	0%
Subtotal		2,301	37,847,464	22%	1,107	19,101,890	14%
GRAND TOTAL		34,352	\$172,128,669	100%	33,162	\$137,911,051	100%

Sources: Contra Costa County; Jones & Stokes; Economic & Planning Systems, Inc.

**Economic &
Planning Systems***Real Estate Economics
Regional Economics
Public Finance
Land Use Policy***MEMORANDUM**

To: East Contra Costa County Habitat Conservation Plan Association

From: Teifion Rice-Evans and Jason Tundermann

Subject: Developer Mitigation Fee Funding Options and Implications; EPS #11028

Date: August 15, 2003

The development of an HCP requires planning-level estimates of the cost of HCP implementation, and prior memoranda have provided initial estimates of land acquisition costs, while restoration, management and monitoring cost estimates are under way. The purpose of the cost estimation is to provide an estimate of the level of funding required. The regulations governing the adoption of both NCCPs and HCPs require a clear demonstration of how implementation costs will be funded. While a portion of the cost may be covered by grant funding or the investment of conservation organizations in particular acquisitions, reliance on such uncertain sources of funding is not sufficient for NCCP/ HCP adoption. Rather, specific local funding sources must be identified that will be adopted, implemented, and updated as necessary to cover the costs of the HCP.

DEVELOPER MITIGATION FEES

Developer mitigation fees often account for a significant portion of HCP/ NCCP funding. Developers, as recipients of incidental take permits, are viewed as beneficiaries of HCPs/ NCCPs, and are generally expected to contribute to funding through fees assessed on a per acre basis. In determining the appropriate developer mitigation fees, a number of issues could be considered:

- *A.) Fair Share Apportionment.* Different plans have taken different approaches to the allocation of implementation costs to new development. Several smaller HCPs, for example, have placed the large majority of the cost burden on new development. Larger HCPs and joint NCCPs/ HCPs tend to attribute a share of the costs to existing development, funded through sources other than developer mitigation fees. For example, the San Joaquin County Multi Species Habitat Conservation Plan attributes about 60 percent of the HCP implementation costs associated with certain habitat types to new development through mitigation fees, with the remaining 40 percent attributed to existing development. This breakdown was based on an estimate of the proportion of habitat take associated with past development and expected habitat take associated with future development. Such an approach must also take account of existing levels of conservation that serve to balance existing development.



- *B.) Developer Participation* – Developers often retain the choice of obtaining incidental take permits through direct communication with the USFWS and CDFG. While the appeal of an NCCP/ HCP is that it can provide a clear, predictable method for obtaining permits, if the fee is set too high many developers may opt out. This can undermine the implementation of the conservation plan.
- *C.) Financial Feasibility* – If the fees levied place too high a burden on development, the rate of development could be significantly affected resulting in a range of unintended consequences. While every development is different, there are specific standards that indicate when mitigation cost burdens, when added to other imposed cost burdens, may render a number of projects infeasible.
- *D.) Maximum Extent Practicable (MEP) Standard* – If the fees levied are very low and outside funding is not used to make up the difference, the HCP may be challenged under the maximum extent practicable standard as was the case with the North Natomas HCP in Sacramento County. The precise meaning of this standard is somewhat unclear, though developer fees that do not generate significant mitigation funding may be deemed too low to permit mitigation to the maximum extent practicable.
- *E.) Mitigation vs. Contribution to Recovery* – It may be possible to categorize the conservation actions in the plan by whether the action simply mitigates impacts covered by the plan or whether it goes beyond what would be required under a project-by-project approach to permitting and contributes to species recovery. Such a categorization could inform cost allocations. However, categorizing conservation actions by such criteria would be very difficult because there are no recovery plans for most of the covered species and the plan currently does not draw a line between mitigation and contribution to recovery except in special cases (e.g., wetlands and riparian woodlands).
- *F.) Availability of Other Funding Sources* – Defining the amount of other, non-developer funding that is available for implementing the goals and objectives of the HCP could inform a decision on how much funding must be raised from development.

In addition to setting the appropriate fee at the time of adoption, the NCCP/ HCP must also include mechanisms for adjusting the fee in the case that HCP costs increase over time. Inflationary cost increases are generally associated with all cost categories, though land costs, depending on fluctuations in the real estate market, can often increase significantly over a relatively short duration. Periodic fee updates must be included in the plan to ensure that the fee funding generated continues to cover its share of the costs. A failure to adjust the fee can result in a limited ability to conserve land as well as legal challenges to the plan.

For the purposes of illustration, a simple fee calculator model has been developed as shown in **Tables 1** and **2**. The numbers are all hypothetical and will be replaced once the cost estimates and covered areas have been determined. The fee calculator in **Table 1** addresses an example scenario with a total HCP implementation cost of \$250 million and permitted development of 10,000 gross acres. The fee calculator in **Table 2** addresses a scenario with a total HCP implementation cost of \$300 million and permitted development of 15,000 gross acres. It is assumed that if more development occurs HCP costs will increase, but by a lower proportion than the additional development.



*East Contra Costa County
HCPA**August 15, 2003
Page 3*

The four alternatives presented differ by the proportion of the cost that is fee funded. In **Table 1**, each alternative considers a 25 percent increment in the proportion of costs fee-funded with Alternative 1, the lowest with 25 percent fee-funded, and Alternative 4, the highest, with 100 percent fee-funded. Under this hypothetical example, the fee calculator shows that the cost burden on development will range from a low of about \$6,250 to a high of \$25,000 per gross acre. Expressed differently, for a typical residential development, with an average development density of 5.5 units per gross acre, the fee will range from the equivalent of \$1,100 per unit to \$4,500 per unit. At the same time, the funding required from non-fee sources decreases from about \$187.5 million to zero as the fee increases in this range.

Under the higher development scenario, the proportions funded by new development are assumed to be higher, with proportions of 40 percent, 65 percent, 90 percent, and 100 percent under the four alternatives. The proportions are increased due to the now greater impact of new development relative to past development. Under this hypothetical example, the fee calculator shows that the cost burden on development will range from a low of about \$8,000 to a high of \$20,000 per gross acre. Expressed differently, for a typical residential development, with an average development density of 5.5 units per gross acre, the fee will range from the equivalent of \$1,500 per unit to \$3,600 per unit. At the same time, the funding required from non-fee sources decreases from about \$180 million to zero as the fee increases in this range.

OTHER FUNDING

Given the scale of this NCCP/ HCP and for the reasons outlined above, funding from other sources will be required. Identifying such funding sources is one of the most challenging components of HCP implementation. A broad list of possible outside funding sources was provided in our January 16, 2003 memo. The most likely sources of local funding will be reviewed in more detail in a subsequent memorandum.



Table 1
Hypothetical Mitigation Fee Calculations - Example 1
East Contra Costa County NCCP/ HCP

HYPOTHETICAL

Items	Alt. 1	Alt. 2	Alt. 3	Alt. 4
Total Cost	\$250,000,000	\$250,000,000	\$250,000,000	\$250,000,000
% Other Funding	75%	50%	25%	0%
% Fee Funding	25%	50%	75%	100%
Other Funding	\$187,500,000	\$125,000,000	\$62,500,000	\$0
Fee Funding	\$62,500,000	\$125,000,000	\$187,500,000	\$250,000,000
Gross Acres Developed	10,000	10,000	10,000	10,000
Fee per Gross Acre	\$6,250	\$12,500	\$18,750	\$25,000
Fee per Residential Unit (1)	\$1,136	\$2,273	\$3,409	\$4,545

Table 2
Hypothetical Mitigation Fee Calculations - Example 2
East Contra Costa County NCCP/ HCP

HYPOTHETICAL

Items	Alt. 1	Alt. 2	Alt. 3	Alt. 4
Total Cost	\$300,000,000	\$300,000,000	\$300,000,000	\$300,000,000
% Other Funding	60%	35%	10%	0%
% Fee Funding	40%	65%	90%	100%
Other Funding	\$180,000,000	\$105,000,000	\$30,000,000	\$0
Fee Funding	\$120,000,000	\$195,000,000	\$270,000,000	\$300,000,000
Gross Acres Developed	15,000	15,000	15,000	15,000
Fee per Gross Acre	\$8,000	\$13,000	\$18,000	\$20,000
Fee per Residential Unit (1)	\$1,455	\$2,364	\$3,273	\$3,636

(1) Assumes average density of 5.5 units per gross acre for residential subdivisions.



MEMORANDUM

To: East Contra Costa County Habitat Conservation Plan Association

From: Teifion Rice-Evans and Jason Tundermann

Subject: Evaluation of Funding Source Options; EPS #11028

Date: September 10, 2003

This technical memorandum further explores the funding sources of the East Contra Costa NCCP/ HCP (the Plan). It builds on prior memoranda and considers the level of Plan support that may be provided by specific entities through funding or land acquisition. It also evaluates options for the level of developer mitigation fees and identifies funding gaps under different funding scenarios. To the extent that scenarios result in funding gaps, additional funding sources will need to be identified. This evaluation continues to work with hypothetical cost numbers, until the cost estimates have been finalized. The hypothetical numbers used are, however, within the general range of expected costs.

ANALYTICAL ASSUMPTIONS

The analysis is driven by estimates of both current land use in East Contra Costa County and estimates of Plan-related permitted development, conservation acres, and associated costs. The assumptions used in this analysis are shown in the **Tables 1 and 2**.

Table 1: Land Development and Conservation in the HCPA's 174,000 Acre Inventory Area

Item	Developed Areas (acres)*	Conservation Areas (acres) **	Ratio (conserved/developed)
Existing	57,000	44,000	0.77
Plan-Related (next 30 years)	11,000	30,000	2.73
Total (after 30 years)	68,000	74,000	1.09

*In both the Existing and Plan-Related categories, Developed Areas include all urban development and 50% of irrigated agriculture, to account for the partially diminished habitat value of agricultural land relative to pristine habitat, as mapped in the HCP/NCCP.

**Conservation Areas include parks and conservation easements.

Table 1 shows the current developed acres and the acres permanently conserved by any and all entities in the Plan Study Area at the present time. The historical ratio of conservation to existing development is 0.77. Preliminary Plan estimates include incidental take permit coverage of an additional 11,000 acres of development and require conservation of an additional 30,000 acres to



take the total conservation area to 68,000 acres. This represents a net new ratio of 2.73, or an overall ratio of 1.09.

Table 2: Hypothetical Plan Cost Summary

Cost Category	Total	Avg. per Conserved Acre
Acquisition	\$210m	\$7,000
OM&M	\$90m	\$3,000
Total	\$300m	\$10,000

Table 2 shows approximate, hypothetical costs associated with Plan implementation. Acquisition costs refer to fee title and easement land acquisitions. OM&M costs refer to operations, management, and maintenance costs, and include restoration costs for the purpose of this analysis.

NON-FEE FUNDING

There are a number of entities and funding sources beyond new development that will continue to conserve land in East Contra Costa County and that may therefore contribute to the HCP's conservation requirements, presently estimated at 30,000 acres of additional conservation and defined by a series of habitat and location attributes. This section identifies opportunities for the HCP to meet some of its requirements by partnering with other contributing entities on new and continued conservation efforts.

Some of these potential contributions will come in the form of grants or other funding for land acquisition, while others will represent direct land purchases by other entities that may be "counted towards" total acquisition goals under the Plan (provided the acquired land is managed according to plan provisions). It is assumed that all financial contributions would be subject to matching HCP funds used towards collaborative acquisition. Four of these potential contributing sources are described below, with each measure's potential contribution to total land acquisition goals summarized in the attached **Table 3**. All contributions from these other entities and sources are focused on the acquisition component of the Plan. While some entities, EBRPD for example, may manage and maintain the land they acquire, funding for such operations may need to be raised through the Plan.

CONTRA COSTA COUNTY OPEN SPACE FUNDING MEASURE

The Contra Costa County Board of Supervisors approved the concept of an open space and agricultural protection funding measure in October, 2002. While this measure has yet to be formally approved for referendum, County staff have formulated preliminary spending priorities by project type and location. A number of potential priority areas – including "Flagship Opportunity Areas" and "Regional Priority Projects" – lie within the proposed HCP boundaries, and have been identified for potential future open space funding. The analysis below assumes that future land within the HCP area acquired for open space preservation using County Open Space Measure funds would contribute to overall HCP conservation and land acquisition goals.



Table 3
Potential Acquisition Funding from Non-Development Sources
East Contra Costa NCCP/ HCP

Item	Projected Conservation Acres	%	Projected Dollar Value (1)	%
Overall Plan	30,000	100%	\$210,000,000	100%
Contra Costa County Open Space Measure (2)	3,857	13%	\$27,000,000	13%
Projected Section 6 Grant Funding (3)	1,429	5%	\$10,000,000	5%
Projected Public/Land Trust Land Acquisition (4)	7,600	25%	\$53,200,000	25%
Projected Byron Airport Land Acquisition (5)	<u>800</u>	<u>3%</u>	<u>\$6,500,000</u>	<u>3%</u>
Total Projected Contributions from Other Entities	13,686	46%	\$96,700,000	46%
Remaining HCP Requirements	16,314	54%	\$113,300,000	54%

(1) Unless otherwise noted, this matrix assumes an average land acquisition cost of \$7,000 per acre.

(2) Includes funds allocated for all "Flagship Opportunity Areas" and "Regional Priority Areas" identified within the proposed HCP boundaries. Assumes all funds are used for land acquisition only.

(3) Assumes East Contra Costa HCP receives approximately \$350,000 of section 6 funds each year. This estimate is approximately one-half the average annual amount received by other Northern California regional HCPs over the past 3 years. This adjustment was made to develop a conservative estimate, and to account for the likely additional future demand for section 6 funds.

(4) Assumes public agencies and private land trusts continue to acquire conservation land within the HCP area for the next 30 years at half of the EBRPD's historical acquisition rate, or approximately 250 acres per year.

(5) These acres represent land targeted by Byron airport within the HCP area to satisfy airport "clear zone" needs. Acquisition cost estimates were provided by airport staff.

Sources: Respective Entities; Contra Costa County; Economic & Planning Systems, Inc.

Approximately \$27 million in Open Space Measure funds have been allocated to priority projects that lie within the Plan Study Area. As shown in **Table 3**, these funds represent about 13 percent of overall acquisition funding requirements and could be used to acquire approximately 3,800 acres at average land costs. For the Open Space Measure to represent a viable funding source, the County would have to continue to develop the funding measure and submit it to voters, subject to approval by a 50 percent weighted majority.

USFWS SECTION 6 FUNDS

The U.S. Fish and Wildlife Service annually provides significant funds in the form of section 6 grants to local jurisdictions developing HCPs. The section 6 grant program is generally divided into three funding categories: Planning Assistance, Land Acquisition, and Land Recovery Grants. This analysis estimates potential future funding availability through the Land Acquisition grant program. Over each of the past three fiscal years, the USFWS has made available, on average, more than \$58 million in land acquisition funds nationally. Of this, an average of approximately 41 percent – nearly \$24 million – was dedicated for land acquisition for HCPs in California, with over 80 percent of the California share going to large regional HCPs in the southern portion of the State.

EPS surveyed the four regional northern California HCPs that received funding over the last 3 years, and estimated that on average, each HCP received approximately \$700,000 annually.¹ In order to account for increased competition due to additional HCPs and potential decreases in section 6 funding, this analysis assumes that the East Contra Costa NCCP/ HCP will receive half of this historical average – roughly \$350,000 annually, or \$10.5 million over 30 years. As shown in **Table 3**, such grants would fund about four percent of overall acquisition funding requirements and could be used to acquire approximately 1,250 acres at average land costs.

PUBLIC AND PRIVATE TRUST LAND ACQUISITION

A number of public and private entities have historically been involved in land acquisition in the Plan Area, including the East Bay Regional Park District (EBRPD), the California Department of Parks and Recreation (CDPR), the Contra Costa Water District (CCWD), the Trust for Public Land, and Save Mount Diablo, to name a few. This section describes historical acquisition trends by several of these entities in an attempt to generate an estimate of likely future land purchases. It should be noted that acquisition by these agencies is highly dependent on funding availability, which varies year-to-year and cycle-to-cycle; average rates are therefore more useful in estimating acquisition over the long-term rather than forecasting purchases in any given year.

- **East Bay Regional Park District.** Historically, the EBRPD has been the most active of the organizations mentioned above in terms of land acquisition for open space preservation in the vicinity of the Plan Area. The EBRPD provided records of historical land acquisition in the vicinity of the HCP planning area since 1971. According to these records, the EBRPD has acquired, on average, approximately 500 acres of land within the proposed HCP planning area each year through 1999.

¹ Northern California HCPs that received Section 6 land acquisition grants included San Bruno (San Mateo County), Ohlone Shell Mound (San Mateo County), Echilet Ranch (San Joaquin County), and Natomas Basin (Sacramento County).



- **California Department of State Parks.** The CDSP has also historically acquired significant amounts of open space in the vicinity of the Plan Area. For example, their acquisitions have expanded Mt. Diablo State Park from approximately 7,000 acres 30 years ago to its current size of approximately 20,000 acres – an average annual acquisition rate of more than 400 acres per year. In January 2003, the California Department of Parks and Recreation (with support from many organizations, including the Trust for Public Land) also acquired Cowell Ranch, a 4,000 acre property inside the Plan Area that will be set aside for open space and dispersed recreation.
- **Contra Costa Water District.** The CCWD has purchased roughly 20,000 acres in the last 15 years for reservoir construction and watershed protection purposes. Since it now owns all or virtually of Los Vaqueros Reservoir watershed, no future protection watershed acquisitions can be expected. However, in conjunction with CALFED, the CCWD is currently investigating the possibility of expanding Los Vaqueros reservoir, which would include the inundation of between 1,600 and 2,600 acres, and would likely also require the acquisition of mitigation acres in the vicinity of the Plan Area. The CCWD is still in the early planning stages, however, and no specific estimates of the number of future mitigation acres are available.
- **Private Land Trusts.** Organizations such as the Trust for Public Land and Save Mount Diablo are also actively involved in land preservation and acquisition in the Plan Area, though they often facilitate transfers rather than acquire land themselves. For example, the Trust for Public Land brokered the Cowell Ranch purchase in association with the CDSP. Save Mount Diablo staff have indicated their organization has historically been involved in the purchase of between 1,000 and 2,000 acre per year, many within the Plan Area, but also indicated that a large portion of this estimate is in combination with acquisitions by the public agencies described above.

To account for rising land prices, more limited acquisition opportunities, and funding constraints, this analysis assumes that the public and private agencies described above will acquire future land in East Contra Costa at one-half the historical rate of the EBRPD, or roughly 250 acres per year. Given the number of agencies actively pursuing open space acquisition in the Plan Area, this is believed to be a conservative estimate of long-term future land contributions from public and private entities. According to this projection, public/private agencies would acquire nearly 7,600 acres of land in the HCP area over the next 30 years, or 25 percent of total acquisition goals. Assuming acquisitions at average land costs, this would represent the equivalent of a \$61 million, or 25 percent, contribution to the acquisition funding requirements as shown in **Table 3**. Though many of these entities would likely receive funding from the County's Open Space Funding Measure should it be put to a referendum and should it pass, acquisitions they make with those funds are included in the projection for the County Open Space Measure.

BYRON AIRPORT LAND ACQUISITION

Long term plans for the Byron Airport include acquiring neighboring parcels in order to secure an adequate "clear zone" in the vicinity of the airport runways. Staff have provided background information on acreage and purchase price estimates related to the clear zone acquisition goals for the airport. All areas of acquisition interest lie within the proposed HCP planning area and all are presently used primarily for grazing and are essentially undeveloped. This analysis assumes that



acquisition and conservation of these parcels for airport needs would also satisfy HCP conservation requirements. As shown in **Table 3**, approximately 800 acres of land has been estimated for clear zone acquisition at an expected cost of \$6.5 million, which represents roughly three percent of acquisition land and funding. The Federal Aviation Administration matches such airport-related acquisitions at a very high rate (9:1), but the possibility exists that, should the HCP provided any matching funds, clear zone acquisition goals would remain fixed but airport financial contributions would decrease slightly.

NET EFFECT OF ALTERNATIVE FUNDING SOURCES

This analysis estimates that the four funding sources described above could cover roughly 46 percent of the Plan's overall land acquisition goals and funding requirements. In particular, the sources could contribute to the acquisition of about 13,000 acres, equivalent to about \$97 million in acquisition value. This represents about 32 percent of overall Plan funding requirements. The remaining 17,000 acres, at a cost of about \$113 million, would have to be acquired through developer mitigation, additional grants and/or outside funds, or some other locally-approved funding source.

MITIGATION FEE FUNDING LIMITATIONS

Developer mitigation fees often contribute a significant proportion to NCCP/ HCP funding. The fee level is, however, generally limited by several considerations. This section addresses the limitations on the level of developer fees that may arise through considerations of fair share apportionment and financial feasibility.

FAIR SHARE APPORTIONMENT

The purpose of conservation efforts under NCCPs is to ensure the conservation of the species through the combination of existing and future conservation efforts. These conservation efforts as a whole ensure that despite the past and future incidental take of species, covered species are preserved and recover. Both past development and future development generate challenges for species recovery and, hence, should contribute towards conservation efforts.

One approach to evaluating the "fair share" contributions of past and new development is to compare existing conservation areas to developed areas and additional conservation areas to additional development areas under the Plan. **Table 1**, above, shows this comparison. As shown, existing conservation efforts, funded through a variety of sources and entities, have resulted in the conservation of 44,000 acres, a ratio of about 0.77 relative to the developed acres. The Draft Plan, itself, requires the conservation of an additional 30,000 acres and could permit an additional 11,000² acres of development, an overall ratio of 2.73, which is higher than the historical conservation ratio. In order to ensure new development pays approximately its "fair share", new conservation needs would need to be allocated between existing and new development such that they both end up contributing at the average ratio of 1.09, as shown in **Table 4**. Please note, the development and conservation figures used to arrive at this "fair share" apportionment are still

² Includes approximately 7000 acres of development of "natural" lands and 8000 acres of development on intensively farmed lands

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preliminary, reflect the assumption that existing intensively farmed lands should be considered 50% developed in the accounting, and that no attempt has been made to attempt to correct for idiosyncrasies of the data, such as the effect of the planning area boundary on the analysis.

Table 4: Preliminary “Fair Share” Apportionment

Item	Dev. Acres	Existing Cons.	New Cons.	Overall Ratio	Fair Share Percentage
Existing Dev.	57,000	44,000	18,000	1.09	60%
New Dev.	11,000	0	12,000	1.09	40%
Total	72,000	44,000	30,000	1.09	100%

As shown, in order for both existing development and new development to contribute an equal ratio of 1.09, about 18,000 of the 30,000 acre conservation needs, about 60 percent, must be funded by existing development. A maximum of 40 percent of Plan costs could be allocated to new development under this approach. While useful, as a general guide as well as for setting a maximum contribution level from new development, this 40 percent factor does not imply that as much as 40 percent of the costs should be funded through developer mitigation fees. A portion of the other funding from the sources mentioned above, including EBRPD funding and County Open Space Measure funding, will, over time and as new development occurs, also come from new development. As a result, this evaluation suggests that funding through developer mitigation fees should be below 40 percent.

FINANCIAL FEASIBILITY

Another limiting factor on the level of developer mitigation fees is the financial feasibility of development. The purpose of the NCCP/ HCP is not to make development infeasible, but rather to ensure recovery of the species and mitigation to the maximum extent practicable (in fact, many NCCP/HCPs attempt to be more cost-effective overall than the project-by-project approach to regulatory compliance). Financial feasibility analysis supports consideration of existing cost burdens on developers and the use of “industry standards” to determine the ability of average developments to bear additional cost burdens. In this case, cost burdens refer to the cost of backbone infrastructure as funded through development impact fees, school fees, special taxes, assessment districts, Mello-Roos Districts, and conditions of approval. As a “rule of thumb”, residential development projects may start to become infeasible if the per-unit backbone infrastructure costs increase above 15 percent of the market value of the unit. Depending on the specifics of the case, some residential projects may be able to carry cost burdens of up to 20 percent.

An evaluation of backbone infrastructure charges in the cities of Antioch, Oakley, Pittsburg, Clayton, and Brentwood reveal costs of between \$30,000 and \$50,000 per single family unit.³ The City of Oakley and Brentwood appear to have the highest costs in this range, in part due to their share of the SR4 bypass transportation project, and in part due to their greater focus on development impact fees and hence the easier measurement of infrastructure costs in these communities.

³ Impact fees are charged for drainage, sewer and water connection, transportation, parks, public safety, capital facilities, schools, child care, and general administration. Not all cities charge each of these fees.



A review of large, single family residential projects in East Contra Costa County cities, with a particular focus on Brentwood and Oakley, reveals that a residential prototype of a 2,500 square foot home on a 6,000 square foot lot (equivalent to about 6 units per gross acre), sells for \$350,000 per unit or above. As shown in **Table 5**, for the cheaper home of this type, the existing maximum cost burden of \$50,000 represents 14.3 percent of the sales price, leaving an additional \$2,500 per unit before the cost burden enters the 15 to 20 percent range. This is equivalent to a fee of \$15,000 per acre, based on 6 units per gross acre density. Developer mitigation fees above this level would push the cost burden on these units into the zone that may render some development projects infeasible, though it is worth noting that significant development continues despite the current cost burdens approaching the 15 percent level. Also, many units at this size and density command higher prices in the \$375,000 to \$400,000 range, and, thus, could bear additional burden.

Table 5: Financial Feasibility Test Cases

	Lower Price Home (existing fees only)	Lower Price Home (with new fee)	Higher Price Home (existing fees only)	Higher Price Home (with new fee)
Unit Value	\$350,000	\$350,000	\$375,000	\$375,000
Existing Burden	\$50,000	\$50,000	\$50,000	\$50,000
Fee per Unit	-	\$2,500	-	\$2,500
Fee per Acre	-	\$15,000	-	\$15,000
Percent	14.3%	15.0%	13.3%	14.0%

This illustrative evaluation suggests that the establishment of mitigation fees at significantly above \$15,000 per acre should be carefully evaluated in terms of its effect on the feasibility of single family residential development.

FUNDING SCENARIOS

The evaluations of non-fee and fee funding sources above permit the construction of a funding scenario under these limiting conditions. The purpose of these scenarios is to establish whether non-fee and fee funding as estimated/ limited in the above evaluations, and under certain sensitivity tests, can generate sufficient funding to cover the hypothetical costs of the Plan, or whether a funding gap remains. When accurate cost estimates are developed, the analysis will be adjusted to apply to the new costs.

Three separate funding scenarios are evaluated in **Table 6**. As shown, total Plan costs are assumed to be \$300 million under all scenarios. All scenarios presume “other entities” continue their acquisitions and funding at the “base” levels described above, equivalent to a contribution of approximately \$100 million. Scenarios vary by their assumption of the per-acre mitigation fee, as described below.

- **Scenario 1** assumes a per-acre fee of \$18,000, which is the fee necessary to close the funding gap entirely, assuming the fee is levied on 11,000 future developed acres. As discussed above, a fee greater than \$15,000 could potentially affect the financial feasibility of housing projects in the low end of the price spectrum (i.e., \$350,000 per unit



or less).⁴ In addition, under this fee structure new development would contribute 67 percent of total Plan costs, which is more than its estimated “fair share” based on historical development and conservation ratios.

- **Scenario 2** assumes a fee of \$15,000 per acre, which corresponds to the maximum level that is not expected to affect project feasibility for lowest cost homes, given the home price and existing fee estimates discussed above.
- **Scenario 3** assumes a fee of \$11,000 per acre, which is the resulting fee when new development contributes its fair share to total Plan costs, equal to 40 percent.

As shown in **Table 6**, *Scenario 1* is the only scenario that covers the full cost of the Plan. At this fee level, however, the feasibility of certain projects at the low-end of the price spectrum may be jeopardized, and new development ends up funding 67 percent of total Plan costs, which is more than its fair share. As shown in *Scenario 2*, a \$15,000 fee results in a \$35 million funding gap and causes new development to fund 55 percent of total Plan costs. A fee of this amount is not expected to affect project feasibility. Finally, *Scenario 3* shows that a fee of \$11,000 per acre, which is sufficient to fund a 40 percent contribution by new development, results in a funding gap of \$80 million.

Table 6: Hypothetical Funding Gap Analysis

Item	Scenario 1: No Funding Gap*	Scenario 2: Fee Set at Estimated Feasible Limit for \$350,000 home**	Scenario 3: “Fair Share” Apportionment***
Total Plan Costs	\$300m	\$300m	\$300m
Non-Fee Funding	\$100m	\$100m	\$100m
Remaining	\$200m	\$200m	\$200m
Fee per Acre	\$18,000	\$15,000	\$11,000
Fee Funds	\$200m	\$165m	\$120m
Fee % of Total Cost	67%	55%	40%
Funding Gap	\$0	\$35m	\$80m

* corresponds to the fee level required to eliminate the funding gap.

** corresponds to the estimated maximum fee from a feasibility perspective for a \$350,000 home with an existing fee burden of \$50,000, as described in more detail above.

*** corresponds to the fee level at which new development funds its “fair share” (40%) (though the caveat remains that, once constructed, new households will be contributing the public funds attributed to “existing development”

As cost estimates are completed, funding scenarios are refined, and cost allocation decisions are being pursued in earnest, an evaluation of opportunities for closing any funding gaps in preferred scenarios will be performed.

⁴ A fee of \$18,000 per acre, or \$3,000 per unit, would result in a total cost burden of 15.14 percent for a unit priced at \$350,000, which is just greater than the 15 percent feasibility threshold described above.



**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)
EXECUTIVE GOVERNING COMMITTEE**

DATE: September 18, 2003
TO: Executive Governing Committee (EGC)
FROM: Member Agency Staff
SUBJECT: Administrative matters

RECOMMENDATION

1) RATIFY three recent invoices from Jones and Stokes.

DISCUSSION

The HCPA Joint Powers Agreement authorizes the HCPA Treasurer to pay consultant invoices upon receiving approval from HCPA Coordinating Agency staff. The Treasurer pays invoices submitted by Contra Costa County upon approval by member agency staff. The HCPA Joint Powers Agreement further provides that such invoices, following staff review and payment by the Treasurer, shall be provided to the EGC for final review and ratification. The purpose of this arrangement is to afford the EGC a maximum possible degree of oversight while also enabling the HCPA to meet its obligations to consultants for payment of invoices within 60 days.

The attached three invoices from Jones and Stokes have been reviewed and approved for payment by Coordinating Agency staff.

Attachments to this memo
not included in web version
of this meeting packet.